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UNITED STATES DISTRICT COURT  
  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
  
HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE  
  
SANTA CLARITA VALLEY WATER AGENCY, )  
 )  
Plaintiff, )  
 )  
v. ) Case No.  
 ) CV 18-6825 SB (RAOx)  
WHITTAKER CORPORATION, et al., )  
 ) Volume 18  
Defendants. ) (Pages 1964 - 2018)  
 )

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REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 9: P.M. SESSION - PART 2  
WEDNESDAY, DECEMBER 1, 2021  
3:11 P.M.  
LOS ANGELES, CALIFORNIA

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MYRA L. PONCE, CSR 11544, CRR, RPR, RMR, RDR  
FEDERAL OFFICIAL COURT REPORTER  
350 WEST 1ST STREET, ROOM 4455  
LOS ANGELES, CALIFORNIA 90012  
(213) 894-2305

**APPEARANCES OF COUNSEL:**

**FOR THE PLAINTIFF:**

NOSSAMAN, LLP  
BY: BYRON P. GEE  
BY: RAVEN MCGUANE  
BY: PATRICK J. RICHARD  
BY: FRED FUDACZ  
Attorneys at Law  
777 South Figueroa Street, 34th Floor  
Los Angeles, California 90017  
(213) 612-7800

NOSSAMAN, LLP  
BY: ILSE CHANDALAR SCOTT  
Attorney at Law  
50 California Street, 34th Floor  
San Francisco, California 94111  
(415) 398-3600

**FOR THE DEFENDANT WHITTAKER CORPORATION:**

EDLIN, GALLAGHER, HUIE & BLUM  
BY: MICHAEL E. GALLAGHER, JR.  
BY: FRED M. BLUM  
BY: DANIEL ERIC TROWBRIDGE  
Attorneys at Law  
500 Washington Street, Suite 700  
San Francisco, California 94111  
(415) 397-9006

**ALSO PRESENT:**

MATT STONE  
SCOTT FRYER  
RON BEATON  
ERIC LARDIERE

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**INDEX OF WITNESSES**

| <u>DEFENDANT'S WITNESSES</u> | <u>PAGE</u> |
|------------------------------|-------------|
| (NONE OFFERED.)              |             |

1  
2  
3  
4  
5  
6  
7  
8  
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11  
12  
13  
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19  
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25

**INDEX OF EXHIBITS**

FOR  
EVIDENCE  
PG.

NUMBER DESCRIPTION

(NONE OFFERED.)

1 WEDNESDAY, DECEMBER 1, 2021; 3:11 P.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 (Out of the presence of the jury:)

03:11PM

5 THE COURT: Back on the record. And all are present  
6 who were present before the break.

7 Mr. Blum, I believe you were going to be saying  
8 something else. Or have you completed your response to the  
9 Court's observation about Mr. Hokkanen's testimony?

03:12PM

10 MR. BLUM: Your Honor, I'm trying to remember what I  
11 said, honestly.

12 THE COURT: Let me just -- that's fine. It's late.  
13 Let me just tell you what I recall. And I took particular note  
14 of this because of the conversation that we had concerning

03:12PM

15 Mr. Hokkanen and his ability to identify other potential  
16 sources is that he testified, as I recall, that what he would  
17 basically do, if he were looking to identify other sources, is  
18 that he would actually conduct an investigation to see who was  
19 disposing of what chemicals in the nearby area as a starting  
20 point to then do further analysis to see whether they  
21 potentially could be a source. And he made it fairly clear he  
22 didn't do any of that.

03:13PM

23 My takeaway from his deposition in this -- his  
24 testimony, rather, in this regard is that he said essentially  
25 it's not Whittaker. And so if it's not Whittaker, well, by

03:13PM

1 definition, it's somebody else.

2 MR. BLUM: Well, Your Honor, I think that's true.  
3 Again, you asked us to give you specifically what we were  
4 asking, what we were asking the Court. And what we identified  
03:13PM 5 in the pleading was specifically the mall wells and no other  
6 location.

7 THE COURT: And so tell me how you would present  
8 this to the jury by way of an instruction, that SIC and who  
9 were negligent or at fault?

03:14PM 10 MR. BLUM: Those parties that -- whose -- whose  
11 contamination was found in the mall wells.

12 THE COURT: But you're not able to identify it other  
13 than being Whittaker and I'm not aware of allowing by this  
14 instruction an apportionment that would identify someone else  
03:14PM 15 in that sort of nondescript way. That's what I'm struggling  
16 with, Mr. Blum.

17 MR. BLUM: I understand where the Court is. And  
18 just to be clear, we're only talking about the negligence  
19 claims here because I think it's different when we get to the  
03:14PM 20 stuff that the Court has to deal with on CERCLA and stuff like  
21 that.

22 The -- we're allowed to seek apportionment if we can  
23 either name or describe with sufficient particularity the  
24 party. And I think we -- I think, since we have a -- a  
03:15PM 25 specific geographical area, we have specific types of

1 contamination, and there is significant evidence that it's not  
2 us and that it was then drawn into V-201 by the pumping system  
3 that was in place, that, I think, is enough -- enough of a  
4 particular description to put it before the jury.

03:15PM

5 I think the Court is right in terms of most of the  
6 way it described the evidence, I just think we just -- we may  
7 disagree on what the legal significance is.

03:15PM

8 THE COURT: And are you able to provide the Court  
9 with any authority that would support this? I'm happy to  
10 provide it if the law supports it.

11 MR. BLUM: Your Honor, right now I don't have that  
12 authority. I would like to be able -- if I have, to come up  
13 with it in the morning, but I understand we're in a time  
14 crunch.

03:16PM

15 THE COURT: Well, what I will allow you to do is  
16 if -- I know the parties have briefed this. But if you  
17 actually have some more specific authority that you want to  
18 cite to the Court, you can send the Court to chambers e-mail,  
19 copying Mr. Richard, the citation, and I'll take a look at it.

03:16PM

20 I'm just not aware of the Court's legal ability to  
21 essentially say, since it -- a party says -- has evidence that  
22 it wasn't them, it therefore must have been somebody else, and  
23 a jury then can allocate responsibility to someone else who  
24 they know nothing about. They don't know how they were

03:16PM

25 negligent, what they did, or at least they don't know who the

1 party potentially even was.

2 MR. BLUM: Your Honor, I mean, let's just play out  
3 what the Court said, and let's assume that the jury believes  
4 we're not responsible for the mall wells. What does the jury  
03:17PM 5 do? It can't apportion it -- it can't give it to us because it  
6 believes that we didn't do it. It's not SIC, and it's not the  
7 plaintiff. So what do I do with this chunk of liability that  
8 they believe none of the parties here is responsible for?

9 THE COURT: Let's talk about the practicality of it  
03:17PM 10 because I think that may address it. What does that translate  
11 into? So what is -- let's say the jury were to say, yeah,  
12 there's some other source at the mall well -- at the mall  
13 wells. What does that translate into? How do they make any  
14 kind of rational allocation in that instance?

03:17PM 15 MR. BLUM: Well, one way is, if they decide that,  
16 for instance, let's say they decide that we're liable for  
17 Saugus 1 and Saugus 2 but not V-201. They can say -- or that  
18 we -- that our contribution to it was infinitesimal and that  
19 the only other known source would be the -- the mall wells and  
03:18PM 20 the pumping. They can assess 95 percent of what they believe  
21 is a liability for V-201. I don't know how that works out with  
22 the total calculations, but juries do that all the time.

23 THE COURT: All right. One last thing before I turn  
24 to Mr. Richard on this. What's the real practical effect of  
03:18PM 25 this? That is to stay --



1 MR. BLUM: Well, less.

2 THE COURT: That's what I'm asking is it's joint and  
3 several liability at least with respect to economic damages;  
4 right?

03:18PM 5 MR. BLUM: Yes.

6 THE COURT: So you would pay less on an  
7 apportionment basis for noneconomic harm; correct?

8 MR. BLUM: Yes.

9 THE COURT: Is there noneconomic harm here?

03:18PM 10 MR. BLUM: No.

11 THE COURT: So what is the practical significance of  
12 this?

13 MR. BLUM: Um, Your Honor, funny thing about it,  
14 that's what Mr. Gallagher and I were talking about last night.

03:19PM 15 I don't know, Your Honor. This is -- this is not a hill that I  
16 want to die on.

17 THE COURT: Look, can I ask you to maybe think about  
18 this and see whether you even want an apportionment of  
19 responsibility where you're going to be spending your time  
03:19PM 20 arguing to the -- to the jury that you should allocate this  
21 much to this party, this much to that party?

22 I'm going to give you this apportionment of  
23 responsibility instruction. It's just going to be if you want  
24 it. It's just going to be a question of whether I'm including  
03:19PM 25 these -- the mall well contributors. And, frankly, I think

1 we're spending a lot of time on what's probably an absolute  
2 academic issue because I can't see how this practically matters  
3 in a case involving complete economic harm.

03:19PM 4 MR. BLUM: I will -- Mr. Gallagher and I will talk  
5 about it, and we will -- if we decide to withdraw it, we will  
6 send an e-mail to the Court.

7 THE COURT: All right. And, Mr. Richard, I will  
8 hear from you if you wish to because I'm not likely going to be  
9 able to give more time to discuss the issues.

03:20PM 10 MR. RICHARD: I just want the record clear I do not  
11 believe the evidence, after Mr. Hokkanen's testimony, supports  
12 giving this instruction at all. I -- and also -- so I'm -- I  
13 just want the record clear I don't think the instruction should  
14 be given at all, and I don't think further argument at this  
03:20PM 15 point is necessary.

16 THE COURT: That's fine. I am fairly persuaded that  
17 there's evidence that SIC may be the cause of the VOCs, not  
18 just from Mr. Hokkanen. There's been other testimony  
19 concerning SIC potentially being a source.

03:20PM 20 But in any event, enough on that because I -- I  
21 think we've taken that as far as it needs to be taken.

22 MR. BLUM: Your Honor, on a completely different  
23 issue, I talked to Mr. Richard at the break. The plume maps  
24 that Mr. Hokkanen relied upon, we've agreed that they could be  
03:20PM 25 entered into evidence, and I'll be providing them to the clerk,

1 to Mr. Cruz.

2 THE COURT: Very well. And the Court accepts the  
3 stipulation.

4 MR. BLUM: Thank you.

03:21PM

5 THE COURT: With regard to damage to real property,  
6 this is the issue, I believe, of diminution in value. And I  
7 have had a chance to review the parties' supplemental briefing  
8 on this.

03:21PM

9 It seems to the Court that there has been no  
10 evidence of diminution in value of the property, nor,  
11 incidentally, am I yet persuaded that there's been evidence of  
12 diminution in value of the groundwater, even assuming that was  
13 an appropriate evaluation or valuation point.

03:22PM

14 The parties agree -- and I think correctly  
15 legally -- that it is Whittaker's burden to demonstrate  
16 diminution in value.

17 So I will hear from the defense, if you wish to be  
18 heard, as to where there is evidence of diminution in value.

03:22PM

19 MR. BLUM: Your Honor, do you mean evidence of no  
20 diminution of value?

21 THE COURT: I'm sorry. That there's evidence of  
22 either no diminution in value or some diminution in value that  
23 is less than the restoration damages.

03:22PM

24 MR. BLUM: Your Honor, the evidence is let's -- if  
25 we take what was testified to by Mr. Alvord about what the

1 property interest is, the evidence is that that hasn't been  
2 affected in any way. The machinery works. The -- everything  
3 is drawing fine. That -- if you look at the water as a result  
4 of the VOCs, it's --

03:23PM

5 THE COURT: No. I'm -- I'm very -- I think I'm  
6 familiar with Whittaker's position that essentially -- and I  
7 don't mean to make light of this.

8 MR. BLUM: I understand.

03:23PM

9 THE COURT: But no harm, no foul. That is to say  
10 that, even if we were responsible for the contamination,  
11 it's -- it's clear that the VOCs are at such a level that it's  
12 not causing problems in being able to serve the water below the  
13 MCLs or even the MCL equivalence. And there's been no evidence  
14 of damage, as you say, to the wells and things of that nature.

03:23PM

15 But it seems to me that you're making a supposition  
16 that the Court is not clear is correct, which is you're  
17 suggesting that that is the valuation of groundwater. You're  
18 saying there's been no harm to the groundwater that's material  
19 and, therefore, there's been no diminution in value, assuming  
20 it's groundwater as opposed to assuming it's land.

03:24PM

21 MR. BLUM: Well, Your Honor, we actually believe  
22 it's land. It's not groundwater. But we argued both because  
23 that's what we believe the plaintiff has been arguing. Because  
24 I think the land itself I think is the key, is the thing that  
25 sort of allows the groundwater claim to go forward.

03:24PM

1 And in terms of the land, the only evidence is  
2 Mr. Alvord talking about the pumping systems and we have -- and  
3 it's clear here that those pumping systems have not been  
4 affected one iota, that there is nothing wrong with any of the  
03:24PM 5 systems, that the VOCs haven't prevented them from pumping  
6 anything. I think the jury can infer no -- no diminution in  
7 value from that evidence.

8 THE COURT: What evidence is there of land valuation  
9 affected by contamination?

03:25PM 10 MR. BLUM: Your Honor, if the number is zero, you  
11 don't need what the value is.

12 THE COURT: But that presupposes what you have to  
13 prove, doesn't it?

14 MR. BLUM: Your Honor, all we have to go -- all we  
03:25PM 15 have to -- in order to go forward with it, we just have to  
16 prove that there is some evidence to support zero, substantial  
17 evidence to support no diminution in value.

18 THE COURT: But tell me how do you value land? How  
19 is land valued?

03:25PM 20 MR. BLUM: One, it can be valued by the cost of  
21 repair. That's a proper way to value -- to value diminution in  
22 value. If it only costs ten cents to clean it up, it's lost  
23 ten cents in value.

24 THE COURT: But you're not claiming cost of repair.  
03:25PM 25 You're saying that the jury shouldn't look at the cost of

1 repair which is restoration damages. You're saying that it's  
2 diminution in value of the land.

3 MR. BLUM: Restoration damages is not -- if the  
4 issue was how much does it cost to restore the land, there is  
03:26PM 5 zero evidence the land is contaminated. If that's -- if that's  
6 the standard that the Court uses, the Court should dismiss  
7 plaintiff's case because there's zero evidence on restoration  
8 of land here. All of the evidence goes to restoration of  
9 groundwater.

03:26PM 10 THE COURT: Isn't -- isn't there evidence that the  
11 VOCs have made their way into the soil and from the soil have  
12 gotten into the groundwater?

13 MR. BLUM: The -- yeah. But that's at the Whittaker  
14 site, not on the land that plaintiff owns. All of the evidence  
03:26PM 15 of movement is at the Whittaker site. There is zero evidence  
16 that there is any contamination of any of the land that  
17 plaintiff claims they own. And we don't even know what -- when  
18 I say own, I'm inferring it's owned. We don't know if it's a  
19 lease. We don't know if it's a license. We don't know if it's  
03:27PM 20 an easement. And that's why we believe -- we actually believe  
21 that the claim of ownership is too vague to substantiate  
22 ownership.

23 THE COURT: So you're saying that there is no  
24 evidence of offsite migration of VOCs from the Whittaker site?

03:27PM 25 MR. BLUM: Oh, no. There's tons of it. But has any

1 of it ended up on plaintiff's land? I don't know. There's  
2 been no evidence it has.

3 For instance, Your Honor, if they don't own the land  
4 right -- that touches the groundwater, you can't infer that  
03:27PM 5 there's contamination to the land. If all they own is what's  
6 on the surface, how has the contamination moved 40 or 50 feet  
7 up? There's no evidence of it.

8 THE COURT: But let's assume there is evidence. If  
9 there is evidence that there was offsite migration of  
03:27PM 10 contaminants that polluted or affected the plaintiff's  
11 property, then the Court would need to have some valuation  
12 evidence as to the impact of that contamination on their  
13 property.

14 MR. BLUM: I would agree. But there's not -- that  
03:28PM 15 evidence doesn't exist, Your Honor.

16 THE COURT: The evidence of contamination of the  
17 plaintiff's property doesn't exist.

18 MR. BLUM: Correct. And this is what I will say.  
19 What is the plaintiff -- what is the ownership interest the  
03:28PM 20 plaintiffs have? Nobody knows. So how can the Court say that  
21 the property has been contaminated where we don't know what the  
22 ownership interest is?

23 For instance, if it's a use easement, clearly the  
24 VOCs haven't interfered with the use easement. If it's a  
03:28PM 25 license, that's not enough.

1 THE COURT: All right. So you're suggesting that  
2 Mr. Alvord didn't provide sufficient evidence as to -- as to  
3 property ownership.

03:28PM 4 MR. BLUM: Yes, sir. Yes. And this would be the  
5 last point. When you look at the evidence for the -- okay.  
6 When you look at the evidence, let's assume the land is the  
7 key. There's no evidence of rest -- of cost of restoration of  
8 the land. All of the evidence goes to restoration of the  
9 groundwater.

03:29PM 10 THE COURT: All right. Let me hear from  
11 Mr. Richard, please.

12 MR. RICHARD: Yes, Your Honor. Thank you.

13 I thought the instruction we were discussing was  
14 damage to real property, and at times it seemed like you and  
03:29PM 15 counsel were speaking at cross purposes.

16 So on that instruction, the question is whether  
17 there should be any reference to diminution in value, and the  
18 Court has correctly pointed out the parties agree that burden  
19 falls to defendant, where there is not that evidence, then that  
03:29PM 20 part of the instruction is not given. So that's how I see that  
21 issue on this instruction.

22 The other comments we've heard over and over again,  
23 this slicing and dicing that's contrary to the law that we've  
24 cited. The *Starrh* case, the *City of Pomona* Ninth Circuit case.  
03:30PM 25 So I'm not --



1 THE COURT: Mr. Richard, you don't have to persuade  
2 me.

3 MR. RICHARD: Okay.

03:30PM

4 THE COURT: I have read that authority, and I have  
5 indicated that you are correct about it and that Mr. Blum, in  
6 my judgment, is incorrect about it.

03:30PM

7 But we also had a discussion about what the evidence  
8 is to support the -- the *Starrh* type of instruction or analysis  
9 that you're entitled to restoration damages because your  
10 property, your client's property, has been damaged through the  
11 introduction of these contaminants.

03:30PM

12 MR. RICHARD: Right. And the *City of Pomona* case  
13 very clearly said that contamination of groundwater provides  
14 sufficient standing in that regard. So I just wanted to be  
15 clear on this instruction or which issue we're dealing with.

16 THE COURT: Is there evidence that -- first of all,  
17 that the water agency owns the property?

03:31PM

18 MR. RICHARD: The evidence is that, for all their  
19 wells, they either own it or have the exclusive right to use  
20 it. And so that is --

21 THE COURT: Just the wells or the property  
22 surrounding --

03:31PM

23 MR. RICHARD: No, he said in the property that the  
24 wells sit on. He said, for all of our wells, the water agency,  
25 both Valencia and then the new water agency after the merger,

1 either owns the land or has an exclusive right to use the land.

2 And he didn't go well-by-well. He said for all the wells.

3 And that, in addition to Keith Abercrombie's

4 testimony about the piping and the water agency, is more than

03:31PM 5 sufficient to meet that jury instruction, which is a different

6 jury instruction.

7 THE COURT: And so now what about the argument that

8 there's no evidence that anything other than the groundwater

9 has been affected by the contaminants?

03:31PM 10 MR. RICHARD: Yeah. And I think two things on that.

11 One, we've heard from several of the geologists saying that

12 they're seeking equilibrium, the contamination doesn't just

13 stay in the groundwater. It does transport back and forth

14 between the surrounding land and the groundwater itself. We've

03:32PM 15 heard testimony that it's not a river, it actually is part of

16 the land, and that those contaminants cling and go back and

17 forth between the soil and the water. That sort of

18 distinction, though. So yes, the evidence supports that, and

19 we can easily find that.

03:32PM 20 But too, the Ninth Circuit's been clear. That's

21 sort of parsing, you know, do the particles of the

22 contamination stay on the land or stick to the water is

23 absolutely unnecessary. We absolutely have standing to sue for

24 the groundwater contamination. But in this case, we also have

03:32PM 25 that interesting evidence that the contamination sticks to the

1 soil, not just to Whittaker's property but at the property  
2 beneath our well.

3 THE COURT: Is there evidence beyond that as to the  
4 contamination affecting the property other than the  
03:33PM 5 groundwater?

6 MR. RICHARD: Affecting the property? I think the  
7 effect is via the groundwater.

8 THE COURT: So the introduction of the VOCs and the  
9 perchlorate all come through the groundwater, and then through  
03:33PM 10 the groundwater, the contaminants stick to or transfer to the  
11 soil. That is the extent of the evidence with regard to  
12 contamination of the water agency's property.

13 MR. RICHARD: Well, no. I mean, it's the -- when  
14 you say property, that's a different question. I thought we  
03:33PM 15 were talking about soil.

16 The groundwater provides -- contamination of  
17 groundwater under *Starrh and Starrh* and *City of Pomona* provides  
18 all the standing we need on these three claims. So I was just  
19 answering Your Honor's question about is there evidence to show  
03:34PM 20 contamination from the soil as distinguished from the  
21 groundwater in the soil.

22 THE COURT: Well, construe my question, if you  
23 would, please, as property. So is there something other than  
24 soil that these contaminants affected your client's --

03:34PM 25 MR. RICHARD: Yes.

1 THE COURT: -- property?

2 MR. RICHARD: Sure. As the water -- I believe the  
3 cases -- we have the right to pump and use the water, and when  
4 we do that, it becomes the property of the agency.

03:34PM

5 THE COURT: I understand. There's water. There's  
6 soil. Is there anything else that you're claiming the evidence  
7 shows the contamination affected?

03:34PM

8 MR. RICHARD: I'm -- I don't think we -- if I  
9 thought about it, Your Honor, I'm sure it's in the piping and  
10 throughout the distribution system, and that's also property.  
11 But no, I think we fully addressed it in those components.

03:35PM

12 THE COURT: All right. I'm going to take this  
13 matter under submission. But I am inclined to accept the  
14 instruction as presented by the plaintiff. I'm not convinced  
15 yet, but I will reflect further that there is any evidence of  
16 diminution of value to the land. I think the -- the argument  
17 doesn't fit the legal principle here that I've heard from  
18 Whittaker.

19 MR. RICHARD: Thank you.

03:35PM

20 THE COURT: Let me move on to the next issue which  
21 is loss of use of real property. And I'll hear from you,  
22 Mr. Blum, if you wish to be heard on this. I'm not sure that I  
23 really understand the basis of the objection to this  
24 instruction. It seems it's a fairly standard loss of use  
25 instruction just modified to fit -- fit the facts of this case.

03:35PM

1 MR. BLUM: Your Honor, I'm just finding the  
2 instruction.

3 THE COURT: You're fine with the instruction? Oh,  
4 you're looking at it.

03:36PM 5 MR. BLUM: I'm just finding the instruction.

6 THE COURT: That's fine. All right.

7 MR. RICHARD: It's No. 58.

8 THE COURT: And, for the record, while you're taking  
9 the lectern, it simply says, "To recover damages for the loss  
03:36PM 10 of use, SCV Water must prove the reasonable cost to repurchase  
11 placement water for the time when it could not use its own  
12 wells." Isn't that a permissible consequential damage  
13 instruction?

14 MR. BLUM: The only issue -- yes, Your Honor. The  
03:36PM 15 only thing I would ask is, if the title of it goes to the jury,  
16 the title is wrong because we're not dealing with real  
17 property. But that's okay. Whatever the Court wants to do,  
18 we'll submit.

19 THE COURT: All right. I'll just indicate it as  
03:37PM 20 loss of use.

21 And the next is plaintiff's property interest. And,  
22 once again, I'll hear from you, Mr. Blum, on this. But it  
23 seems like this is just the issue we seem to be going round and  
24 round on. And I thought I had decided this issue. I know not  
03:37PM 25 in a way that you're pleased with, and I know you think I'm

1 contradicting Judge Wu's ruling, which I'm not. But haven't --  
2 hasn't the Court already decided this issue?

03:37PM 3 MR. BLUM: Your Honor, this has -- I don't think it  
4 has anything to do with -- with -- with that issue. I think  
5 the -- the type of interest plaintiff says they own is  
6 something the jury needs to consider when there's -- when  
7 they're trying to determine what has been the invasion of their  
8 rights. How can the jury decide that there's been an invasion  
9 of the plaintiff's property rights without knowing what those  
03:38PM 10 rights are?

11 THE COURT: But isn't that a factual question?  
12 There's going to be instruction about they have to prove, at  
13 least for certain claims, that there's been a trespass on their  
14 property and the like. Isn't that just going to be a matter of  
03:38PM 15 factual argument?

16 MR. BLUM: Your Honor, no. The facts -- I don't --  
17 the issue is, for instance -- and, actually, if they -- if they  
18 owned the property and they were using it to water their own  
19 land, their rights would be -- would be greater than they are  
03:38PM 20 if they're just using the water to sell. And the rights that  
21 they're saying they're interfered with are their -- are their  
22 appropriative rights. That's it.

23 So they can't -- other than if they can prove damage  
24 to their own property, which, you know, the jury will decide  
03:39PM 25 whether or not there's sufficient evidence, they have to prove

1 damage to the rights of use. And -- and the issue is -- the  
2 question is when do those rights have to be damaged? And what  
3 the case law says -- and this is one in which the cases cited  
4 by Mr. Peter have no application because we don't talk about  
03:39PM 5 it -- is when does the damage have to occur? If it's a factory  
6 right, it has to occur after they actually use the water.

7 THE COURT: And didn't the Court already rule  
8 against Whittaker on this argument? Because the Court has  
9 concluded that, if they can demonstrate that they have a  
03:39PM 10 property interest in the soil, the surface, or the subsurface  
11 and that that has been impacted, then they can demonstrate  
12 potentially restoration damages, although as reflected in the  
13 *Starrh and Starrh* case -- and that's S-t-a-r-r-h -- they have  
14 to make a demonstration to the -- to the jury that, in fact,  
03:40PM 15 it's reasonable, that the restoration costs are reasonable and  
16 there are various factors.

17 But aren't you continuing to push back on the  
18 Court's reading of *Starrh and Starrh*?

19 MR. BLUM: Your Honor, first of all, if we want to  
03:40PM 20 preserve our record, unfortunately we have no -- we have no  
21 option.

22 THE COURT: That's fine, but you can tell me that's  
23 what you're doing. You can tell me, Judge Blumenfeld, based  
24 upon your ruling, you shouldn't give this instruction, but your  
03:40PM 25 ruling is incorrect and we have -- we object to it.

1 MR. BLUM: Your Honor, I -- with respect to the  
2 Court, I do think your ruling was incorrect, but we're not -- I  
3 don't want to re-argue it.

03:40PM 4 THE COURT: I understand that, and you have clearly  
5 preserved that. What I need to figure out, though, is are you  
6 in a sense trying to go at it again with an instruction, or are  
7 you, as you just suggested, really just seeking to preserve  
8 your objection?

03:41PM 9 MR. BLUM: Both, Your Honor. We believe, in order  
10 for them to claim -- the ability to claim the damage is  
11 different from the triggering point. Yes, under your rulings,  
12 they could claim the damage. We still believe the trigger for  
13 that damage is at the time they use the water for -- and that's  
14 the point.

03:41PM 15 THE COURT: Isn't it the case that if -- let's say  
16 they just said they weren't going to use water -- they weren't  
17 a water supply company -- but they just said, look, this --  
18 this contamination has affected our property. Right? And all  
19 the evidence that they presented was the evidence of absorption  
03:41PM 20 and that somehow there's contamination that has now made its  
21 way into the soil, there subsurface of their property. They  
22 could still make this argument to the jury, couldn't they,  
23 except that perhaps they should lose.

03:42PM 24 MR. BLUM: Your Honor, it comes down to the point  
25 that we were talking about in the last -- one of the last



1 instructions. If -- are they claiming that the damage is  
2 damage to their property or damage to the water? And what they  
3 seem to be is the only -- the damage to the property is in a  
4 sense very small, if any. All they're really claiming and all  
03:42PM 5 the evidence for restoration relates solely to damage to the  
6 water.

7 THE COURT: Well, but isn't that because they happen  
8 to use this property for that purpose and doesn't that just go  
9 to the reasonableness analysis that the jury is going to have  
03:42PM 10 to decide?

11 MR. BLUM: Yes. But what the cases that we cite in  
12 this instruction is when is that damage triggered? And -- and,  
13 Your Honor, I'm -- it's been a long day for everybody. I would  
14 just submit on it. I think we've -- we understand -- everybody  
03:42PM 15 understands each other's points.

16 THE COURT: Very well. All right. Then let's --  
17 and, actually, let me just very briefly hear a response because  
18 I am going to take the matter under submission. And I hope to  
19 get -- if not all of the instructions, most of these  
03:43PM 20 instructions to you, as I indicated, this evening.

21 MR. RICHARD: I don't have much to add other than,  
22 as soon as the Court denied the motion on the restoration  
23 damages, the in limine motion and the motion for  
24 reconsideration, we received a number of instructions trying to  
03:43PM 25 resuscitate that issue, and this is one of them.

1           So I've argued this, and I don't need to add  
2           anything to the Court's -- I think the Court understands the  
3           issue better than I do. So I'm going to sit down.

03:43PM 4           THE COURT: Well, one question, though, in that  
5           regard. Is it a correct proposition, legal proposition, that,  
6           once you can demonstrate damage to the subsurface -- let's  
7           exclude the water -- the subsurface, the soil, that that is  
8           sufficient for you to seek restoration damages. And then the  
9           question is whether those restoration damages are reasonable.  
03:44PM 10          And in this context, since you happen to -- or your client uses  
11          the property for water supply, that is a factor that simply  
12          gets considered in the reasonableness of the restoration damage  
13          request.

14          MR. RICHARD: And that's exactly right, Your Honor.  
03:44PM 15          And the cases we cited, they are case specific. What are the  
16          restoration? Is it damage to your home, damage -- and so it's  
17          case specific. And that's exactly right, that it goes to the  
18          reasonableness of the restoration damages. And that's an  
19          evidentiary, you know, question for the jury in this case.

03:44PM 20          THE COURT: All right. Why don't you remain there  
21          for negligence per se.

22          MR. RICHARD: Oh, because that's not my issue,  
23          Your Honor.

24          THE COURT: Then let me hear from you on this one,  
03:44PM 25          Mr. Gee. And, Mr. Gee, the majority of the cases that I have

1 seen suggest that RCRA is not an appropriate statute to allow  
2 for negligence per se. Is that a fair characterization of the  
3 case law on this?

03:45PM 4 MR. GEE: Well, we did cite to a case that basically  
5 reflects the property use of RCRA and negligence per se, which  
6 is that it is evidence of negligence by virtue of the violation  
7 of RCRA that gives rise to -- that, if we improve, that the  
8 violations gave rise to the damages that -- that we incurred  
9 would be an appropriate application of negligence per se.

03:46PM 10 THE COURT: That's the minority decision, is that  
11 correct?

12 MR. GEE: Yeah, I haven't fully briefed all -- all  
13 of the cases on that issue.

03:46PM 14 THE COURT: But most of the cases that I have seen,  
15 other than that one, come out the other way with some reasoning  
16 that seems persuasive to me.

17 MR. GEE: Well, I guess, Your Honor, the -- some of  
18 the cases that defendant -- defendants point to basically say,  
19 the only RCRA remedy associated with RCRA is under  
03:46PM 20 42 U.S.C. 6972. However, if we take a look at  
21 42 U.S.C. 6972(f), it basically says nothing in this section  
22 shall restrict the rights which any person shall have with  
23 regard to -- with regards to common law and to seek enforcement  
24 of any statutory standard or requirement.

03:47PM 25 THE COURT: But is that really the point for

1 determining whether or not this essentially establishes a  
2 presumption of negligence per se? You can pursue other claims,  
3 but that doesn't really bear on the issue that we're  
4 discussing, does it?

03:47PM

5 MR. GEE: Well, Your Honor, I guess I can cite to,  
6 you know, the purpose of RCRA which, if we take a look at  
7 section 69 -- or 42 U.S.C. 6900, you know, when congress passed  
8 RCRA, it basically says that it's meant to prevent damages --  
9 I'm taking a look at (b)(14), essentially with open dumping of

03:47PM

10 particularly harmful -- or particularly harmful to health  
11 and -- harmful and health contaminated drinking water from  
12 underground --

13 THE COURT: I'm generally familiar with the purpose  
14 of it. It's a strict liability statute; correct?

03:47PM

15 MR. GEE: That's correct.

16 THE COURT: And how does that affect the evaluation  
17 as to whether this gives rise to a presumption of negligence  
18 per se?

03:48PM

19 MR. GEE: Well, Your Honor, the -- by violating  
20 RCRA, the -- you know, the defendants should be aware that  
21 there are consequences and that --

22 THE COURT: From a doctrinal standpoint, the fact  
23 that this is strict liability, does that cut in favor or  
24 against a presumption?

03:48PM

25 MR. GEE: Um, I -- I guess I -- I don't understand

1 the issue.

2 THE COURT: Let me ask a different question, then.

3 Is there private right of action under RCRA?

4 MR. GEE: There is a prior right of action under the

03:48PM 5 citizens suit. However, as I mentioned, where we're not

6 talking about whether, you know, the plaintiffs can have a

7 prior right of action under RCRA, we're -- we're talking

8 about --

9 THE COURT: But you do recognize that there's a

03:49PM 10 strain of case law that says that, in looking to determine

11 whether statutory violation gives rise to a presumption, you do

12 take into account whether the violation would give rise to a

13 private right of action. There is law that stands for that

14 proposition; is that correct?

03:49PM 15 MR. GEE: I have not -- I have not looked at that.

16 THE COURT: All right. Let's move on, then.

17 If the Court concludes that RCRA doesn't give rise

18 to a presumption, that would apply to the California

19 counterpart. Would you agree with that?

03:49PM 20 MR. GEE: Yeah, basically one -- or they're mimics

21 of what -- of the same action.

22 THE COURT: And the same would be true with respect

23 to the federal and state counterpart for the Clean Water Act?

24 MR. GEE: Well, there's a Porter-Cologne Act which

03:50PM 25 is somewhat separate than what is available underneath the

1 Clean Water Act. The Clean Water Act basically -- basically  
2 gives -- you know, protects navigable water. Porter-Cologne  
3 Act actually has provisions that protect underground -- or  
4 groundwater sources. And, you know, under the Porter-Cologne  
03:50PM 5 Act 13304, and I -- I don't have it in front of me, but I  
6 believe it's like (c)(5) -- that allows public entities to --  
7 to basically recover costs associated with releases, associated  
8 with contamination much in the sense -- same sense that the  
9 Regional Water Quality Control Board can seek, you know,  
03:51PM 10 basically to recover their damages associated with -- with  
11 water contamination.

12 THE COURT: And let me have you respond to  
13 Whittaker's brief with regard to the L.A. County ordinances.

14 MR. GEE: Well, the L.A. County ordinances should  
03:51PM 15 not come as any surprise to Whittaker in the sense that the  
16 L.A. County ordinance is -- basically prohibit the release and  
17 disposal of noxious material that -- that can cause a nuisance.  
18 And so, you know, that is a standard, that -- that prohibits  
19 basically some of the activities that they did that resulted in  
03:51PM 20 soil contamination and -- and the groundwater contamination.

21 THE COURT: What about their claim that they've been  
22 prejudiced because you have not introduced any evidence -- and  
23 maybe it's not even a matter of prejudice, it's a matter of  
24 lack of proof -- about the appropriate standard of care or  
03:52PM 25 whether there was, in fact, a violation of these ordinances?

1 MR. GEE: Well, Your Honor, the -- there are -- some  
2 of the ordinances do require that before getting -- before  
3 discharging waste, you need to get a permit.

03:52PM

4 THE COURT: Is there any evidence of permitting in  
5 this case?

6 MR. GEE: There -- there is no -- there is no  
7 evidence that they obtained a permit but, again --

8 THE COURT: Is there any evidence one way or the  
9 other on that issue?

03:52PM

10 MR. GEE: Again, as Mr. Richard pointed out, we were  
11 not entitled to provide -- to be given -- we asked for  
12 evidence, and we were told that it was either lost or otherwise  
13 unavailable.

03:52PM

14 THE COURT: All right. But is there any trial  
15 evidence before this jury on the question of permitting?

16 MR. GEE: Um, again, we --

17 THE COURT: It's a yes or a no.

18 MR. GEE: No. No, there is not and --

03:53PM

19 THE COURT: So you're not entitled to this  
20 instruction, then, are you? That's the Court's ruling. And  
21 there's a long pause in response to the Court's question.

22 What about the other instruction, the other  
23 ordinance, rather, 20.36.010? That's not the permitting. Is  
24 there evidence that would support providing that ordinance as a  
25 basis for a presumption of negligence per se?

03:53PM

1 MR. GEE: Well, the fact that it prohibits waste  
2 materials from being disposed of in water bodies and surface --  
3 well, let's see. Hang on a second. Well, it's much -- much in  
4 the same way as -- as a prohibition against -- again, the  
03:54PM 5 disposal and deposit of any waste material which may cause a  
6 public nuisance or menace to public health. This does not  
7 require a permit for this to be actionable and it's --

8 THE COURT: And --

9 MR. GEE: I'm sorry.

03:54PM 10 THE COURT: That's okay, Mr. Gee. I'm interrupting  
11 you.

12 MR. GEE: Oh.

13 THE COURT: If I were to give this as a basis for a  
14 presumption, is it -- is there any added value in giving any  
03:54PM 15 other statute or law as a basis for a presumption in this case?

16 MR. GEE: Well, again, you know, this is just -- a  
17 cause of action for which a -- a -- an act conducted by  
18 Whittaker gives rise to damages associated with -- with -- with  
19 their release -- releases of contamination.

03:55PM 20 THE COURT: Let me put it another way. If the jury  
21 were to conclude that you haven't proven this, you haven't  
22 proven that Whittaker deposited any material which may create a  
23 public nuisance or a menace to the public health or safety or  
24 which may pollute underground or surface waters, then you're  
03:55PM 25 going to lose. You're going to lose on negligence for sure,



1 let alone on this presumption issue; correct?

2 MR. GEE: If you're -- if -- if your question is  
3 does the same evidence substantiate or support both nuisance --  
4 nuisance and negligence per se, I would have to agree that they  
03:55PM 5 do.

6 THE COURT: What I'm really driving at is, if I were  
7 convinced to give this ordinance as a basis for the  
8 presumption, is there any reason why I would give any other  
9 statute or law as a basis for presumption? Because either the  
03:56PM 10 jury would decide that this gives rise to that presumption of  
11 negligence per se that you've proven this or not. There's no  
12 other statute that you're relying upon that is going to affect  
13 that.

14 That is to say, where they might say the plaintiff  
03:56PM 15 hasn't proven a violation of 20.36.010 to give rise to a  
16 presumption of negligence per se, but sure have proven a  
17 violation of -- and you filled in the blank of the laundry list  
18 of statutory violations that you've submitted. Am I correct or  
19 incorrect on that?

03:56PM 20 MR. GEE: Can you rephrase -- rephrase the question?  
21 I'm -- I don't --

22 THE COURT: Is there any other statutory violation  
23 that you are offering that adds anything to this statute for  
24 purposes of the negligence per se presumption instruction that  
03:57PM 25 you're requesting?

1 MR. GEE: No, Your Honor. I guess it's -- it's --  
2 for this one, it's -- it would give rise to, you know, other  
3 tort claims.

03:57PM

4 THE COURT: So in other words, the jury couldn't  
5 say, no, plaintiff hasn't proven 20.36.010's been violated, but  
6 the plaintiff has proven -- you filled in the blank of all of  
7 the other statutes that you want me to give as a basis for the  
8 presumption. Am I right on that?

9 MR. GEE: For this particular statute, yes.

03:57PM

10 THE COURT: Are you satisfied if I decide -- I still  
11 haven't heard from Whittaker. If I decide to give this as a  
12 basis for the presumption, are you satisfied with my giving  
13 just this one ordinance?

14 MR. GEE: Just this one single ordinance that --

03:58PM

15 THE COURT: Yes.

16 MR. GEE: L.A. County?

17 Um, no. Again, the Porter-Cologne Act does contain  
18 a right of -- private right of recovery for public entities  
19 like my client.

03:58PM

20 THE COURT: Tell me what it practically does,  
21 Mr. Gee. Put yourself in the shoes of the jury.

22 MR. GEE: Okay.

23 THE COURT: And they're going to be listening to all  
24 of these statutes.

03:58PM

25 MR. GEE: Okay.

1 THE COURT: And then argue it to the jury in your  
2 own mind. How does it matter to the jury to have two, three,  
3 or four different statutes that either largely say the same  
4 thing, overlap to an extent? That's the point I'm driving at.

03:58PM

5 MR. GEE: Okay. Well, for instance, Your Honor,  
6 let's say that we have -- that we have costs associated with  
7 investigation for the release to groundwater under the  
8 Porter-Cologne Act. We do have -- we do have as a public  
9 entity the right to claim costs associated with that -- that is  
10 not -- there are costs that are not covered by oversight  
11 because, for example, DTSC --

03:59PM

12 THE COURT: Mr. Gee, either you're not understanding  
13 me, respectfully, or I'm not understanding you, and I'm not  
14 sure which is the case. But this is -- the jury's not going to  
15 make a determination as to whether you violated statute A, B,  
16 C, or D for purposes -- or whether Whittaker did for purposes  
17 of this instruction. You're not going to know. Have you  
18 provided the Court with any special verdict form that asks the  
19 jury to come back and say they violated statute A, B, C, or D?  
20 I'm not recalling that you did, but maybe I'm misremembering.  
21 Did you?

03:59PM

04:00PM

22 MR. GEE: No. No, Your Honor.

23 THE COURT: So I return to the question that I asked  
24 you. Is there any value, if I give a presumption of negligence  
25 per se instruction, am I giving more than this one statute,

04:00PM

1 this one ordinance?

2 I'm going to let you confer with counsel, and I'll  
3 hear from Mr. Blum.

04:00PM 4 MR. BLUM: Your Honor, is there anything specific  
5 you want me to deal with?

6 THE COURT: This particular ordinance. I will tell  
7 you that, Mr. Blum, that I'm looking to see if there's  
8 prejudice here that I could find, not that I'm necessarily  
9 looking for it or not looking for it. But because this is  
04:01PM 10 purely a matter of law, I'm having a hard time seeing  
11 prejudice, and that's why I'm focused on this particular  
12 ordinance.

13 MR. BLUM: Well, Your Honor, it depends on how they  
14 want to prove we did it. If they're going to argue, for  
04:01PM 15 instance, that what we do was -- was a harm to public health,  
16 we would have taken discovery on that, and it's a possibility  
17 we would have retained an expert to say no.

18 THE COURT: But let's assume that they're not going  
19 to argue that there was an actual injury to public health but,  
04:01PM 20 rather, they're going to argue that under this ordinance, your  
21 client was not permitted to pollute the underground or surface  
22 waters and they did so here.

23 MR. BLUM: Well, Your Honor, if that's what their  
24 argument is, I think that there's no evidence to support that  
04:02PM 25 because there's no evidence we did.

1 THE COURT: Right. And in which case, you win on  
2 this.

3 MR. BLUM: Well, in which case, if there's no  
4 evidence, the instruction shouldn't even go to the jury.

04:02PM 5 THE COURT: Well, I understand that. But that goes  
6 back to your motion --

7 MR. BLUM: Yes, I understand that.

8 THE COURT: So let's assume for purposes of this  
9 discussion, because we're at jury instructions, that you're  
04:02PM 10 going to lose on your JMOL.

11 MR. BLUM: Well, Your Honor, it's -- the statute  
12 doesn't say you're not allowed to dispose of anything on the  
13 ground. It says you're not allowed to pollute. So it's got to  
14 mean something, the word "pollute." So, for instance, it  
04:02PM 15 probably doesn't -- the example I would use -- it's the easiest  
16 one -- is if we poured distilled water on the ground, that  
17 wouldn't be in violation of the statute.

18 The difficulty with the statute is and where we  
19 would actually focus on it is, at the time we did it, we -- we  
04:03PM 20 were not polluting. For instance -- and why perchlorate, it's  
21 not a big issue because everybody agrees that it wasn't until  
22 1997 that there was a problem. We would have submitted more  
23 evidence on the issue of what was known about TCE at the time  
24 or whether or not we knew we were polluting or had reasonable  
04:03PM 25 belief that we were polluting or all of those issues. But we

1 didn't even know this was an issue until halfway through this  
2 trial.

3 THE COURT: What about the creating a public  
4 nuisance portion of the ordinance?

04:03PM 5 MR. BLUM: Well, in order for there to be a public  
6 nuisance, there has to be harm to the public which brings us  
7 back to harm with health.

8 THE COURT: But there is a claim in this case of  
9 public nuisance.

04:03PM 10 MR. BLUM: Yes. And we've asked for a JMOL because  
11 one of the requirements of it is to show harm to public health.

12 THE COURT: But for purposes of whether you've been  
13 prejudiced by the last minute introduction of this particular  
14 instruction -- this ordinance, how can I find prejudice, if, in  
04:04PM 15 fact, one of the bases of a public nuisance and that's a claim  
16 in the case?

17 MR. BLUM: Because there's a difference between --  
18 in our view, of a claim for public nuisance and negligence  
19 per se. And the reason we're fighting so hard on the  
04:04PM 20 negligence per se is because it -- what it tells the jury, you  
21 don't have to find anything wrong. All you have to find is a  
22 violation of this statute. And it's always a much easier pull  
23 for a plaintiff than other causes of action.

24 We would have definitely, if we were confronting  
04:04PM 25 this cause of action, have been able to bring in a

1 toxicologist. And, in fact, I think -- I believe a  
2 toxicologist was on our original expert witness designation.  
3 I'm not 100 percent sure, but I think it was. We decided not  
4 to do it because of the way the case was structured.

04:05PM

5 THE COURT: And one last time, Mr. Blum, when this  
6 indicates that, if you create a public nuisance, you're saying  
7 that the prejudice here is that, even though you are facing a  
8 public nuisance claim, that, because the negligence per se is  
9 so much more of a concern to your client, that you would have  
10 done more at this trial to address that point?

04:05PM

11 MR. BLUM: Yes, sir. And there's other issues -- I  
12 mean, we would have dealt with the -- yes, sir.

13 THE COURT: All right. What about the other federal  
14 claims that are being asserted as the predicate?

04:05PM

15 MR. BLUM: Your Honor, first of all, they can't just  
16 put RCRA. They've got to tell us what section. We have the  
17 right to know, when we go into closing, are we defending the  
18 entire RCRA statute or sections of RCRA? And that they've  
19 never told us.

04:06PM

20 THE COURT: Is Mr. Gee correct that RCRA can form  
21 the predicate for --

22 MR. BLUM: No.

23 THE COURT: -- negligence per se?

24 MR. BLUM: RCRA is a very -- RCRA has a very limited  
25 private right of action. It has procedural protections in it

04:06PM

1 such as the requirement of a 90-day notice. It has  
2 limitations, what you have to prove to bring your action. And  
3 then it has very limited remedies. That was the purpose behind  
4 RCRA. It never was meant as a broad statute in which you can  
04:06PM 5 bring -- basically get common law damages under. And this  
6 would pervert the intent of RCRA.

7 Congress didn't write it this way, and I don't think  
8 the state has the right to use it this way.

9 THE COURT: What about the -- the Porter-Cologne as  
04:06PM 10 well as the Federal Clean Water Act?

11 MR. BLUM: Porter-Cologne Act does not -- the  
12 Porter-Cologne does not provide for a private right of action  
13 for plaintiff. I don't know what section -- this is another  
14 thing. I have no idea what section they're talking about.

04:07PM 15 The one that is generally used I think is 133. That  
16 area doesn't provide a private action except under the  
17 circumstances in which the water board assesses penalties  
18 against somebody, and then there's a private right of action to  
19 seek contribution. That's not what we have here. And those  
04:07PM 20 people that have the right to sue, my understanding is -- and I  
21 limit this as I don't know what statute -- what section they're  
22 going under. I'll -- I'll accept that I could be wrong.

23 The people that have the right to bring it are the  
24 district attorneys of each county and the regional water boards  
04:07PM 25 or the State Attorney General's Office. That's my



1 understanding of the people who have the right.

2 And again, give me the section. But you just  
3 can't -- you just can't say Porter-Cologne Act. What's the  
4 jury supposed to know? And there's -- and right now, the only  
04:07PM 5 evidence we have in this case is from Mr. Hughto who didn't  
6 even know the Porter-Cologne Act existed.

7 THE COURT: All right. Anything further on this  
8 issue?

9 MR. BLUM: Um, no, Your Honor.

04:08PM 10 THE COURT: I'll hear, Mr. Gee, from you on the  
11 Court's question. And I also will give you an opportunity to  
12 respond to Mr. Blum's argument about prejudice here for the  
13 reasons that he's mentioned.

14 MR. GEE: Your Honor, again, we don't think there is  
04:08PM 15 any prejudice. I mean, this -- this is -- you know, a fairly  
16 straight -- straightforward county ordinance that basically  
17 says a person shall not discharge or cause discharge  
18 something -- cause public nuisance or which may pollute  
19 groundwater and surface water.

04:08PM 20 THE COURT: But what he argued was that, in light of  
21 the significance of negligence per se, had he been made aware  
22 that you were proceeding on this ground, that he would have  
23 mounted a vigorous defense, including presenting evidence that  
24 there was no public nuisance in a way that he hasn't. You  
04:09PM 25 heard his argument.

1 MR. GEE: You mean hiring a toxicologist. Is  
2 that --

3 THE COURT: Among other things.

4 MR. GEE: Okay. I don't think -- you know, I don't  
04:09PM 5 think there would be any additional defenses that he has not  
6 already raised that would -- that would -- would have caused  
7 him to not be subject to this violation of the city ordinance.

8 THE COURT: And then what are the specific statutes  
9 that you're relying upon? We're now moving past these two  
04:09PM 10 ordinances which are specific. What specific statutes are you  
11 relying on under every single ground that you're seeking to use  
12 as a predicate for negligence per se?

13 MR. GEE: And, Your Honor, you know, again, if the  
14 section -- citing for a specific section of RCRA, again, there  
04:10PM 15 are just so many sections that were violated. And again, there  
16 are -- there were -- are requirements that, once you close a  
17 property, that you take proper action to implement a RCRA  
18 corrective action -- corrective action plan. And there's the  
19 evidence of -- you know, Mr. Alibrandi, president of Whittaker  
04:10PM 20 Corporation, saying, well, I mean, he's being told by his  
21 consultants that -- that there is this requirement and that  
22 what he was planning on doing does not comply with RCRA.

23 THE COURT: But, Mr. Gee, I have to specifically  
24 instruct the jury, and they have to have a specific predicate,  
04:11PM 25 do they not, so that they can say, here's the law, specific

1 law, here's the evidence, was there a violation of that  
2 specific law? The defendant is entitled to know what the  
3 specific law is, not a large act like RCRA; correct?

04:11PM 4 MR. GEE: Yes. Your Honor, there are -- you know,  
5 there are specific sections of the RCRA regulations that we --  
6 that was clearly violated, and it's --

7 THE COURT: Have -- have you provided that to the  
8 Court in the jury instructions? Because what I have is very  
9 vague and general. It says, "RCRA gives EPA the authority to  
04:11PM 10 control activities related to hazardous waste, including the  
11 generation, transportation, treatment, storage, and disposal of  
12 hazardous waste. Any violations of RCRA that were a  
13 substantial factor in bringing about SCV Water's harm gives  
14 rise to a claim for negligence per se."

04:12PM 15 I don't know as a judge what I would do with that  
16 precisely. What is the jury to do with that?

17 MR. GEE: Well, we can cite to the EPA notice of  
18 violation for which Whittaker was well aware that occurred back  
19 in the late 1980s as -- as evidence of the violations that --  
04:12PM 20 of RCRA that they -- that they knew of.

21 THE COURT: And what specific act was violated in  
22 that circumstance that the jury can consider?

23 MR. GEE: Well, brought in evidence that, you know,  
24 groundwater monitoring was not implemented, for instance.

04:12PM 25 THE COURT: Have you given the Court the specific

1 law and have you given Whittaker the specific law under RCRA  
2 that has been violated? Yes or no, please.

3 MR. GEE: No. We did not list that in the jury  
4 instruction.

04:12PM

5 THE COURT: Did you do that with regard to any law  
6 other than the two ordinances of L.A. County? Did you do that  
7 for any federal or state law that you have provided other than  
8 the two L.A. County ordinances?

04:13PM

9 MR. GEE: For Porter-Cologne Act, we did cite to  
10 1334 -- 13304.

11 THE COURT: You did. Anything else?

04:13PM

12 MR. GEE: Actually, I'd have to take a look, but  
13 there was some NPDES violations, and I may have cited to the  
14 specific provisions associated with the NPDES violations. I'll  
15 have to look, though.

04:13PM

16 THE COURT: And so answer the question if you -- if  
17 you don't mind, that the Court asked you before you -- you sat  
18 down and consulted with Mr. Richard. Are you asking the Court  
19 for an instruction with every single one of these predicates or  
20 something less?

04:13PM

21 MR. GEE: Um, we would probably withdraw the  
22 permit -- the county permit violation because we don't have  
23 evidence as to whether or not they applied for a permit and --  
24 and obviously -- would bother me, though, that we couldn't  
25 produce evidence of a permit because we didn't get evidence --

04:14PM

1 THE COURT: That's a discovery issue; right?

2 MR. GEE: Yes.

3 THE COURT: All right. We're at trial, please,  
4 Mr. Gee.

04:14PM 5 MR. GEE: Yes. Other than that, Your Honor, I -- I  
6 think that there's -- there's plenty of evidence that -- that  
7 there are violations of -- of RCRA. We didn't cite to a  
8 specific provision. We did cite to a specific provision of the  
9 Porter-Cologne Act, as I recall.

04:14PM 10 THE COURT: All right. I'm going to take this  
11 matter under submission. I will tell you, I'm -- I am  
12 concerned about how this matter was presented by the plaintiff.  
13 This is an important issue. All counsel understood that from  
14 the outset. Negligence per se is a significant issue when  
04:15PM 15 you're trying to prove negligence, especially in a case like  
16 this where you're dealing with standards of care and activities  
17 that go back a long way.

18 It seems to me it does require care from counsel to  
19 be very specific and to provide the information in a timely way  
04:15PM 20 to both the other side, Whittaker, as well as to the Court.  
21 And I do have serious concerns about how this is presented.

22 But I'm going to take a further look at this, and  
23 you'll have the Court's ruling on it, obviously if not tonight,  
24 by tomorrow morning.

04:15PM 25 MR. GEE: Thank you, Your Honor.

1 THE COURT: And so you're going to have to  
2 proceed -- Mr. Richard, you may not get a ruling until tomorrow  
3 morning. You're going to have to unfortunately have a plan A  
4 and a plan B with regard to this portion of your slide deck,  
04:16PM 5 assuming you're using a PowerPoint.

6 MR. RICHARD: Understood. Are we -- do I have time  
7 to make my motion on the cross-complaint?

8 THE COURT: Of course you do. Yes.

9 MR. RICHARD: I think I can share with the Court  
04:16PM 10 that, when I met and conferred briefly with Mr. Blum on this  
11 issue, he said he had not been thinking about whether he had a  
12 cross-complaint. But there are seven claims, two of which  
13 arguably could go to the jury. One for negligence, and that's  
14 claim 7, and -- and I think the other was contribution.

04:16PM 15 So there's been no evidence of harm. And as I stand  
16 here, I don't know if Whittaker's intending to pursue it. But  
17 the record should be clear because at the outset the Court  
18 instructed the jury that there were cross-claims. And I don't  
19 want to be surprised and have Mr. Blum argue cross-claims  
04:17PM 20 tomorrow in front of the jury and expect to have a final  
21 closing argument so --

22 THE COURT: Let me do this. Let me ask Mr. Blum  
23 what his position is so this way you actually have a target  
24 that matters.

04:17PM 25 All right.

1 MR. BLUM: Your Honor, may I have one second?

2 THE COURT: Yes.

3 (Pause in the proceedings.)

4 MR. BLUM: Just a second, Your Honor.

04:18PM 5 Your Honor, right this moment I'm in a little  
6 ethical quandary. I can't agree to dismiss it because I need  
7 the client's permission.

8 THE COURT: Understood.

9 MR. BLUM: So --

04:18PM 10 THE COURT: Tell me within -- within those  
11 boundaries what you anticipate, and this will not bind you or  
12 Whittaker.

13 MR. BLUM: I had not -- I did not intend to argue  
14 that -- I intend to argue they're negligent but not that we are  
04:18PM 15 damaged as a result. Other than the -- that we have to pay  
16 more for the cleanup as -- which is different in my mind.

17 THE COURT: All right. So let me -- thank you. Let  
18 me hear from Mr. Richard as to where that leaves you with  
19 regard to your -- your motion. And if this is of any help to  
04:19PM 20 you, I will indicate that you have preserved your -- your  
21 rights with regard to making a motion to their entire  
22 cross-complaint.

23 MR. RICHARD: Thank you, Your Honor.

24 As a practical matter, I was focused on the  
04:19PM 25 potential claims that could go to the jury, and the 7th claim

1 is for negligence. Plaintiff owed a duty and then as a --  
2 paragraph 34 of the cross-complaint as a -- or counter-claim,  
3 as a direct and proximate result of plaintiff's negligence,  
4 Whittaker has been damaged in an amount according to proof.

04:19PM

5 Well, there is no proof. So that's -- that's an easy one.

6 The fifth counter-claim against counter-defendant,  
7 contribution at line 7, after alleging to the extent Whittaker  
8 may have any liability, quote, "Plaintiff is liable to  
9 Whittaker for contribution for all costs to the extent that  
10 Whittaker might have liability to a nonparty."

04:20PM

11 Again, there's just no evidence of harm, and so I  
12 don't believe there's any issue. And also, it's probably been  
13 waived because there are no questions in the verdict form that  
14 was submitted months ago and has been worked on. So it is out  
15 of an abundance of caution that I want to address this now and  
16 not be surprised.

04:20PM

17 THE COURT: All right. Mr. Blum, how would you  
18 suggest we proceed?

19 MR. BLUM: If counsel can give me three hours after  
20 we get out of here, my -- I will probably be able to resolve  
21 the problem. Considering where we are, I'm sure the Court is  
22 able to rule tomorrow morning if I don't get the answer I  
23 expect.

04:20PM

24 THE COURT: That's fine. So I'll defer ruling until  
25 I know that it is a disputed issue.

04:20PM



1 I am going to order the parties to be here tomorrow  
2 at 7:30 because I'm going to provide you with the -- with the  
3 jury instructions. I can see sad looks on faces.

04:21PM

4 Let's go off the record for a moment to discuss  
5 this.

6 Off the record.

7 (Off-the-record discussion.)

8 THE COURT: Back on the record.

04:24PM

9 So the parties are ordered back tomorrow at  
10 8:00 o'clock. And with regard to the PowerPoint presentations  
11 that each counsel intends to use, we had an off-the-record  
12 discussion where I indicated that I would like to receive  
13 tomorrow morning a copy of your respective PowerPoint  
14 presentations. However, both counsel agreed not to have  
15 their -- their own PowerPoint shared with the other side, which  
16 is agreeable to the Court.

04:25PM

17 So the parties will be providing me an ex parte  
18 communication of their PowerPoints.

04:25PM

19 Also, Mr. Blum indicated that I may not be getting  
20 the final version of his PowerPoint to the limited extent that  
21 he's making changes in the course of hearing Mr. Richard's  
22 closing argument, and that's fine. But I expect that I'm going  
23 to get the version that is the final version other than  
24 whatever changes that you are contemporaneously making.

04:25PM

25 Let me make sure that I have accurately stated what

1 was materially stated off the record and agreed upon.

2 Mr. Richard?

3 MR. RICHARD: Yes, Your Honor, you have.

4 THE COURT: Mr. Blum?

04:26PM

5 MR. BLUM: That's correct, Your Honor.

6 THE COURT: All right. Then is there anything  
7 further that we have to discuss before we conclude?

8 Since you're standing, I'll go with you first,  
9 Mr. Blum, then Mr. Richard.

04:26PM

10 MR. BLUM: First, Your Honor, after plaintiff does  
11 their small part of Mr. Dawson's --

12 THE COURT: Use the microphone if you would, please.

13 MR. BLUM: After plaintiff reads -- does the small  
14 portion of Mr. Dawson's tomorrow, I would like -- if I could do  
15 it in advance, we have to make a directed verdict motion based  
16 on the issues we've also already raised in the JMOL.

04:26PM

17 THE COURT: All right. That's fine. Why don't we  
18 do this. So this is for your anticipating possibly a 50(b)  
19 motion. Is that what you're --

04:26PM

20 MR. BLUM: I believe that's the section, Your Honor.

21 THE COURT: All right. And so procedurally,  
22 Mr. Richard, do you have any objection if -- if that is done  
23 after closing arguments?

24 MR. RICHARD: Not at all, Your Honor.

04:27PM

25 THE COURT: All right. Is that agreeable, Mr. Blum?

1 MR. BLUM: That's fine. I do also have one other  
2 question, Your Honor.

3 THE COURT: Yes.

4 MR. BLUM: I don't want to have to interrupt  
04:27PM 5 Mr. Richard, and I know -- and I don't want him to interrupt  
6 me. But what I would like to be able -- so I don't want to  
7 have to make the argument during his closing that the facts  
8 don't support the argument. And I would like those issues to  
9 be preserved so that we're not -- and also, that any issue  
04:27PM 10 raised by us in the JMOL is deemed raised as it relates to the  
11 closing argument. Otherwise, I'm in a really tough position  
12 when I would -- and I'm actually making this -- it benefits the  
13 plaintiff.

14 THE COURT: I'm not sure really what it is that  
04:27PM 15 you're asking. If you're asking essentially that you preserve  
16 all objections to anytime that the other side has arguably  
17 strayed from the trial evidence, I'm not sure how that would  
18 practically work.

19 MR. BLUM: Well, Your Honor, we have -- the two of  
04:28PM 20 us have a very different view of some of the evidence. Either  
21 I have to object to his closing, which most likely is going to  
22 get annoying to everybody, including myself, on those grounds  
23 or they're preserved and if -- if I have to appeal, that I  
24 don't want to be -- I don't want the argument back that I've  
04:28PM 25 waived that argument.

1 THE COURT: I'm not sure how you're going to be able  
2 to proceed in that fashion.

3 MR. BLUM: Well, I've done it before, Your Honor.  
4 And what we agree with the Court's consent that objections as  
04:28PM 5 to -- that the evidence doesn't support the argument are  
6 preserved and don't have to be made at the time of the argument  
7 but could be made after the argument.

8 THE COURT: And give me the appellate argument that  
9 results from that because you're taking me out of the equation  
04:29PM 10 here.

11 MR. BLUM: Not intentionally, Your Honor. But  
12 what -- for instance, if he makes an argument and the appellate  
13 Court says, yes, it was wrong but you didn't object to it at  
14 the time of closing, therefore, you waived it.

04:29PM 15 THE COURT: I understand that. But practically  
16 speaking, your argument is going to be that there was  
17 insufficient evidence to support the verdict if it's an adverse  
18 verdict. And you have filed a JMOL and have renewed it at the  
19 close of your case. So tell me where the daylight is between  
04:29PM 20 those two points.

21 MR. BLUM: Your Honor, this is just what I've done  
22 pretty much every case I've tried --

23 THE COURT: All right. I don't think I'm going to  
24 agree to that because I don't understand the consequences of  
04:29PM 25 it. So if you think that you need to stand up and object every

1 time, I'm not sure that you need to do so from an appellate  
2 standpoint, but I can't make that determination for you.

3 I have never seen what you're suggesting, and I've  
4 been doing this for a while as well. And if you could explain  
04:30PM 5 to me the practical significance of it, then perhaps I will  
6 reconsider. But otherwise, I think we -- we have a respective  
7 job to do.

8 If you believe that the -- that Mr. Richard is not  
9 arguing either from the evidence or reasonable inferences from  
04:30PM 10 the evidence, then presumably you're going to object. And  
11 if -- that's different, it seems to me, than saying that the  
12 evidence doesn't potentially support the verdict.

13 So I'm just not really tracking what you're  
14 requesting, and so I'm reluctant to do it.

04:30PM 15 MR. BLUM: That's fine, Your Honor.

16 THE COURT: All right. We are in recess until --  
17 actually, Mr. Richard, I don't know that I gave you an  
18 opportunity.

19 MR. RICHARD: I was just thinking about our  
04:30PM 20 discussion before opening statement, Your Honor, where similar  
21 concerns were raised. And the only argument in opening  
22 statement, as I reread it, was from Mr. Blum repeatedly, and I  
23 didn't object.

24 So, you know, I can't sit here and hear that he's  
04:31PM 25 concerned I'm going to do something inappropriate without at

1 least saying I think he's worried about the wrong orator.

2 THE COURT: I didn't hear him to suggest that.

3 Here's what I heard him to say, for whatever it's worth, is  
4 that your whole argument is going to be improper because you  
04:31PM 5 can't argue that you're entitled to a verdict because you  
6 haven't presented any evidence that would support a verdict.

7 Have I gotten that right, Mr. Blum?

8 MR. BLUM: Generally, yes, sir.

9 THE COURT: Pretty close.

04:31PM 10 All right. We're in recess. Have a good evening.

11 MR. RICHARD: Thank you.

12 (Proceedings adjourned at 4:31 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

COUNTY OF LOS ANGELES     )  
   )  
STATE OF CALIFORNIA        )

I, MYRA L. PONCE, FEDERAL OFFICIAL REALTIME COURT  
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CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT  
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DATED THIS 2ND DAY OF DECEMBER, 2021.

/S/ MYRA L. PONCE

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MYRA L. PONCE, CSR NO. 11544, CRR, RDR  
FEDERAL OFFICIAL COURT REPORTER

| 1  | A  | ADDRESS  | AMOUNT   |  |
|--|--|--|--|--|
| 1 [2] - 1968:1, 1971:17<br>100 [1] - 2002:3<br>133 [1] - 2003:15<br>13304 [2] - 1993:5, 2007:10<br>1334 [1] - 2007:10<br>1980S [1] - 2006:19<br>1997 [1] - 2000:22 | ABERCROMBIE'S [1] - 1981:3<br>ABILITY [3] - 1968:15, 1970:20, 1987:10<br>ABLE [10] - 1969:12, 1970:8, 1970:12, 1973:9, 1975:12, 2001:25, 2011:20, 2011:22, 2014:6, 2015:1<br>ABSOLUTE [1] - 1973:1<br>ABSOLUTELY [2] - 1981:23<br>ABSORPTION [1] - 1987:19<br>ABUNDANCE [1] - 2011:15<br>ACADEMIC [1] - 1973:2<br>ACCEPT [2] - 1983:13, 2003:22<br>ACCEPTS [1] - 1974:2<br>ACCORDING [1] - 2011:4<br>ACCOUNT [1] - 1992:12<br>ACCURATELY [1] - 2012:25<br>ACT [14] - 1992:23, 1992:24, 1993:1, 1993:3, 1993:5, 1997:17, 1998:8, 2003:10, 2003:11, 2004:3, 2004:6, 2007:9, 2008:9<br>ACT [3] - 1995:17, 2006:3, 2006:21<br>ACTION [16] - 1992:3, 1992:4, 1992:7, 1992:13, 1992:21, 1995:17, 2001:23, 2001:25, 2002:25, 2003:2, 2003:12, 2003:16, 2003:18, 2005:17, 2005:18<br>ACTIONABLE [1] - 1995:7<br>ACTIVITIES [3] - 1993:19, 2006:10, 2008:16<br>ACTUAL [1] - 1999:19<br>ADD [2] - 1988:21, 1989:1<br>ADDED [1] - 1995:14<br>ADDITION [1] - 1981:3<br>ADDITIONAL [1] - 2005:5 | [3] - 1971:10, 2002:10, 2011:15<br>ADDRESSED [1] - 1983:11<br>ADDS [1] - 1996:23<br>ADJOURNED [1] - 2017:12<br>ADVANCE [1] - 2013:15<br>ADVERSE [1] - 2015:17<br>AFFECT [2] - 1991:16, 1996:12<br>AFFECTED [8] - 1975:2, 1976:4, 1976:9, 1978:10, 1981:9, 1982:24, 1983:7, 1987:18<br>AFFECTING [2] - 1982:4, 1982:6<br>AGENCY [5] - 1980:17, 1980:24, 1980:25, 1981:4, 1983:4<br>AGENCY'S [1] - 1982:12<br>AGO [1] - 2011:14<br>AGREE [8] - 1974:14, 1978:14, 1979:18, 1992:19, 1996:4, 2010:6, 2015:4, 2015:24<br>AGREEABLE [2] - 2012:16, 2013:25<br>AGREED [3] - 1973:24, 2012:14, 2013:1<br>AGREES [1] - 2000:21<br>ALIBRANDI [1] - 2005:19<br>ALLEGING [1] - 2011:7<br>ALLOCATE [2] - 1970:23, 1972:20<br>ALLOCATION [1] - 1971:14<br>ALLOW [2] - 1970:15, 1990:1<br>ALLOWED [3] - 1969:22, 2000:12, 2000:13<br>ALLOWING [1] - 1969:13<br>ALLOWS [2] - 1975:25, 1993:6<br>ALONE [1] - 1996:1<br>ALVORD [3] - 1974:25, 1976:2, 1979:2 | [1] - 2011:4<br>ANALYSIS [3] - 1968:20, 1980:8, 1988:9<br>ANGELES [1] - 1968:2<br>ANNOYING [1] - 2014:22<br>ANSWER [2] - 2007:16, 2011:22<br>ANSWERING [1] - 1982:19<br>ANTICIPATE [1] - 2010:11<br>ANTICIPATING [1] - 2013:18<br>ANYTIME [1] - 2014:16<br>APPEAL [1] - 2014:23<br>APPELLATE [3] - 2015:8, 2015:12, 2016:1<br>APPLICATION [2] - 1986:4, 1990:9<br>APPLIED [1] - 2007:23<br>APPLY [1] - 1992:18<br>APPORTION [1] - 1971:5<br>APPORTIONMENT [5] - 1969:14, 1969:22, 1972:7, 1972:18, 1972:22<br>APPROPRIATE [4] - 1974:13, 1990:1, 1990:9, 1993:24<br>APPROPRIATIVE [1] - 1985:22<br>AREA [3] - 1968:19, 1969:25, 2003:16<br>ARGUABLY [2] - 2009:13, 2014:16<br>ARGUE [9] - 1987:3, 1998:1, 1999:14, 1999:19, 1999:20, 2009:19, 2010:13, 2010:14, 2017:5<br>ARGUED [3] - 1975:22, 1989:1, 2004:20<br>ARGUING [3] - 1972:20, 1975:23, 2016:9<br>ARGUMENT [24] - 1973:14, 1981:7, 1983:16, 1985:15, 1986:8, 1987:22, 1999:24, 2004:12, 2004:25, 2009:21, 2012:22, 2014:7, 2014:8, 2014:11, 2014:24, 2014:25, | 2015:5, 2015:6, 2015:7, 2015:8, 2015:12, 2015:16, 2016:21, 2017:4<br>ARGUMENTS [1] - 2013:23<br>ASSERTED [1] - 2002:14<br>ASSESS [1] - 1971:20<br>ASSESSES [1] - 2003:17<br>ASSOCIATED [8] - 1990:19, 1993:7, 1993:10, 1995:18, 1998:6, 1998:9, 2007:14<br>ASSUME [5] - 1971:3, 1978:8, 1979:6, 1999:18, 2000:8<br>ASSUMING [4] - 1974:12, 1975:19, 1975:20, 2009:5<br>ATTORNEY [1] - 2003:25<br>ATTORNEYS [1] - 2003:24<br>AUTHORITY [5] - 1970:9, 1970:12, 1970:17, 1980:4, 2006:9<br>AVAILABLE [1] - 1992:25<br>AWARE [5] - 1969:13, 1970:20, 1991:20, 2004:21, 2006:18 |
| 2  | 2 [1] - 1971:17<br>20.36.010 [2] - 1994:23, 1996:15<br>20.36.010'S [1] - 1997:5<br>2021 [1] - 1968:1   |  |  |  |
| 3  | 34 [1] - 2011:2<br>3:11 [1] - 1968:1   |  |  |  |
| 4  | 40 [1] - 1978:6<br>42 [3] - 1990:20, 1990:21, 1991:7<br>4:31 [1] - 2017:12   |  |  |  |
| 5  | 50 [1] - 1978:6<br>50(B [1] - 2013:18<br>58 [1] - 1984:7   |  |  |  |
| 6  | 69 [1] - 1991:7<br>6900 [1] - 1991:7<br>6972 [1] - 1990:20<br>6972(F [1] - 1990:21   |  |  |  |
| 7  | 7 [2] - 2009:14, 2011:7<br>7:30 [1] - 2012:2<br>7TH [1] - 2010:25  |  |  |  |
| 8  | 8:00 [1] - 2012:10   |  |  |  |
| 9  | 90-DAY [1] - 2003:1<br>95 [1] - 1971:20  |  |  |  |
|  |  |  |  | B  |
|  |  |  |  | B)(14 [1] - 1991:9<br>BASED [2] - 1986:23, 2013:15<br>BASES [1] - 2001:15<br>BASIS [9] - 1972:7, 1983:23, 1994:25, 1995:13, 1995:15, 1996:7, 1996:9, 1997:7, 1997:12<br>BEAR [1] - 1991:3<br>BECOMES [1] - 1983:4<br>BEHIND [1] - 2003:3<br>BELIEF [1] - 2000:25<br>BELIEVES [2] - 1971:3, 1971:6<br>BELOW [1] - 1975:12<br>BENEATH [1] - 1982:2<br>BENEFITS [1] - 2014:12<br>BETTER [1] - 1989:3<br>BETWEEN [4] -   |



|  |  |  |   |   |
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| 1981:14, 1981:17,<br>2001:17, 2015:19<br><b>BEYOND</b> [1] - 1982:3<br><b>BIG</b> [1] - 2000:21<br><b>BIND</b> [1] - 2010:11<br><b>BLANK</b> [2] - 1996:17,<br>1997:6<br><b>BLUM</b> [18] - 1968:7,<br>1969:16, 1980:5,<br>1983:22, 1984:22,<br>1999:3, 1999:7,<br>2002:5, 2009:10,<br>2009:19, 2009:22,<br>2011:17, 2012:19,<br>2013:4, 2013:9,<br>2013:25, 2016:22,<br>2017:7<br><b>BLUM</b> [70] - 1968:10,<br>1969:2, 1969:10,<br>1969:17, 1970:11,<br>1971:2, 1971:15,<br>1972:1, 1972:5,<br>1972:8, 1972:10,<br>1972:13, 1973:4,<br>1973:22, 1974:4,<br>1974:19, 1974:24,<br>1975:8, 1975:21,<br>1976:10, 1976:14,<br>1977:13, 1977:25,<br>1978:14, 1978:18,<br>1979:4, 1984:1,<br>1984:5, 1984:14,<br>1985:3, 1985:16,<br>1986:19, 1987:1,<br>1987:9, 1987:24,<br>1988:11, 1999:4,<br>1999:13, 1999:23,<br>2000:3, 2000:7,<br>2000:11, 2001:5,<br>2001:10, 2001:17,<br>2002:11, 2002:15,<br>2002:22, 2002:24,<br>2003:11, 2004:9,<br>2010:1, 2010:4,<br>2010:9, 2010:13,<br>2011:19, 2013:5,<br>2013:10, 2013:13,<br>2013:20, 2014:1,<br>2014:4, 2014:19,<br>2015:3, 2015:11,<br>2015:21, 2016:15,<br>2017:8<br><b>BLUM'S</b> [1] - 2004:12<br><b>BLUMENFELD</b> [1] -<br>1986:23<br><b>BOARD</b> [1] - 1993:9<br><b>BOARD</b> [1] - 2003:17<br><b>BOARDS</b> [1] - 2003:24<br><b>BODIES</b> [1] - 1995:2 | <b>BOTHER</b> [1] - 2007:24<br><b>BOUNDARIES</b> [1] -<br>2010:11<br><b>BREAK</b> [2] - 1968:6,<br>1973:23<br><b>BRIEF</b> [1] - 1993:13<br><b>BRIEFED</b> [2] -<br>1970:16, 1990:12<br><b>BRIEFING</b> [1] - 1974:7<br><b>BRIEFLY</b> [2] -<br>1988:17, 2009:10<br><b>BRING</b> [4] - 2001:25,<br>2003:2, 2003:5,<br>2003:23<br><b>BRINGING</b> [1] -<br>2006:13<br><b>BRINGS</b> [1] - 2001:6<br><b>BROAD</b> [1] - 2003:4<br><b>BROUGHT</b> [1] -<br>2006:23<br><b>BURDEN</b> [2] -<br>1974:15, 1979:18 | 1976:23<br><b>CERCLA</b> [1] - 1969:20<br><b>CERTAIN</b> [1] -<br>1985:13<br><b>CHAMBERS</b> [1] -<br>1970:18<br><b>CHANCE</b> [1] - 1974:7<br><b>CHANGES</b> [2] -<br>2012:21, 2012:24<br><b>CHARACTERIZATIO</b><br><b>N</b> [1] - 1990:2<br><b>CHEMICALS</b> [1] -<br>1968:19<br><b>CHUNK</b> [1] - 1971:7<br><b>CIRCUIT</b> [1] - 1979:24<br><b>CIRCUITS</b> [1] -<br>1981:20<br><b>CIRCUMSTANCE</b> [1] -<br>2006:22<br><b>CIRCUMSTANCES</b> [1]<br>- 2003:17<br><b>CITATION</b> [1] -<br>1970:19<br><b>CITE</b> [8] - 1970:18,<br>1988:11, 1990:4,<br>1991:5, 2006:17,<br>2007:9, 2008:7,<br>2008:8<br><b>CITED</b> [4] - 1979:24,<br>1986:3, 1989:15,<br>2007:13<br><b>CITING</b> [1] - 2005:14<br><b>CITIZENS</b> [1] - 1992:5<br><b>CITY</b> [3] - 1979:24,<br>1980:12, 1982:17<br><b>CITY</b> [1] - 2005:7<br><b>CLAIM</b> [16] - 1975:25,<br>1977:21, 1987:10,<br>1987:12, 1993:21,<br>1998:9, 2001:8,<br>2001:15, 2001:18,<br>2002:8, 2006:14,<br>2009:14, 2010:25,<br>2011:2, 2011:6<br><b>CLAIMING</b> [4] -<br>1976:24, 1983:6,<br>1988:1, 1988:4<br><b>CLAIMS</b> [11] -<br>1969:19, 1977:17,<br>1982:18, 1985:13,<br>1991:2, 1997:3,<br>2002:14, 2009:12,<br>2009:18, 2009:19,<br>2010:25<br><b>CLEAN</b> [4] - 1992:23,<br>1993:1, 2003:10<br><b>CLEAN</b> [1] - 1976:22<br><b>CLEANUP</b> [1] -<br>2010:16<br><b>CLEAR</b> [10] - 1968:21, | 1969:18, 1973:10,<br>1973:13, 1975:11,<br>1975:16, 1976:3,<br>1980:15, 1981:20,<br>2009:17<br><b>CLEARLY</b> [4] -<br>1978:23, 1980:13,<br>1987:4, 2006:6<br><b>CLERK</b> [1] - 1973:25<br><b>CLIENT</b> [4] - 1989:10,<br>1997:19, 1999:21,<br>2002:9<br><b>CLIENT'S</b> [3] -<br>1980:10, 1982:24,<br>2010:7<br><b>CLING</b> [1] - 1981:16<br><b>CLOSE</b> [3] - 2005:16,<br>2015:19, 2017:9<br><b>CLOSING</b> [8] -<br>2002:17, 2009:21,<br>2012:22, 2013:23,<br>2014:7, 2014:11,<br>2014:21, 2015:14<br><b>COLOGNE</b> [12] -<br>1992:24, 1993:2,<br>1993:4, 1997:17,<br>1998:8, 2003:9,<br>2003:11, 2003:12,<br>2004:3, 2004:6,<br>2007:9, 2008:9<br><b>COMMENTS</b> [1] -<br>1979:22<br><b>COMMON</b> [2] -<br>1990:23, 2003:5<br><b>COMMUNICATION</b> [1]<br>- 2012:18<br><b>COMPANY</b> [1] -<br>1987:17<br><b>COMPLAINT</b> [4] -<br>2009:7, 2009:12,<br>2010:22, 2011:2<br><b>COMPLETE</b> [1] -<br>1973:3<br><b>COMPLETED</b> [1] -<br>1968:8<br><b>COMPLETELY</b> [1] -<br>1973:22<br><b>COMPLY</b> [1] - 2005:22<br><b>COMPONENTS</b> [1] -<br>1983:11<br><b>CONCERN</b> [1] -<br>2002:9<br><b>CONCERNED</b> [2] -<br>2008:12, 2016:25<br><b>CONCERNING</b> [2] -<br>1968:14, 1973:19<br><b>CONCERNS</b> [2] -<br>2008:21, 2016:21<br><b>CONCLUDE</b> [2] -<br>1995:21, 2013:7 | <b>CONCLUDED</b> [1] -<br>1986:9<br><b>CONCLUDES</b> [1] -<br>1992:17<br><b>CONDUCT</b> [1] -<br>1968:18<br><b>CONDUCTED</b> [1] -<br>1995:17<br><b>CONFER</b> [1] - 1999:2<br><b>CONFERRED</b> [1] -<br>2009:10<br><b>CONFRONTING</b> [1] -<br>2001:24<br><b>CONGRESS</b> [2] -<br>1991:7, 2003:7<br><b>CONSENT</b> [1] - 2015:4<br><b>CONSEQUENCES</b> [2]<br>- 1991:21, 2015:24<br><b>CONSEQUENTIAL</b> [1]<br>- 1984:12<br><b>CONSIDER</b> [2] -<br>1985:6, 2006:22<br><b>CONSIDERED</b> [1] -<br>1989:12<br><b>CONSIDERING</b> [1] -<br>2011:21<br><b>CONSTRUE</b> [1] -<br>1982:22<br><b>CONSULTANTS</b> [1] -<br>2005:21<br><b>CONSULTED</b> [1] -<br>2007:18<br><b>CONTAIN</b> [1] -<br>1997:17<br><b>CONTAMINANTS</b> [6] -<br>1978:10, 1980:11,<br>1981:9, 1981:16,<br>1982:10, 1982:24<br><b>CONTAMINATED</b> [3] -<br>1977:5, 1978:21,<br>1991:11<br><b>CONTAMINATION</b><br>[26] - 1969:11,<br>1970:1, 1975:10,<br>1976:9, 1977:16,<br>1978:5, 1978:6,<br>1978:12, 1978:16,<br>1980:13, 1981:12,<br>1981:22, 1981:24,<br>1981:25, 1982:4,<br>1982:12, 1982:16,<br>1982:20, 1983:7,<br>1987:18, 1987:20,<br>1993:8, 1993:11,<br>1993:20, 1995:19<br><b>CONTEMPORANEO</b><br><b>USLY</b> [1] - 2012:24<br><b>CONTEXT</b> [1] -<br>1989:10<br><b>CONTINUING</b> [1] - 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| 1986:17<br><b>CONTRADICTING</b> [1] -<br>1985:1<br><b>CONTRARY</b> [1] -<br>1979:23<br><b>CONTRIBUTION</b> [5] -<br>1971:18, 2003:19,<br>2009:14, 2011:7,<br>2011:9<br><b>CONTRIBUTORS</b> [1] -<br>1972:25<br><b>CONTROL</b> [1] -<br>1993:9<br><b>CONTROL</b> [1] -<br>2006:10<br><b>CONVERSATION</b> [1] -<br>1968:14<br><b>CONVINCED</b> [2] -<br>1983:14, 1996:7<br><b>COPY</b> [1] - 2012:13<br><b>COPYING</b> [1] -<br>1970:19<br><b>CORPORATION</b> [1] -<br>2005:20<br><b>CORRECT</b> [14] -<br>1972:7, 1975:16,<br>1978:18, 1980:5,<br>1989:5, 1990:11,<br>1991:14, 1991:15,<br>1992:14, 1996:1,<br>1996:18, 2002:20,<br>2006:3, 2013:5<br><b>CORRECTIVE</b> [2] -<br>2005:18<br><b>CORRECTLY</b> [2] -<br>1974:14, 1979:18<br><b>COST</b> [6] - 1976:20,<br>1976:24, 1976:25,<br>1977:4, 1979:7,<br>1984:10<br><b>COSTS</b> [7] - 1976:22,<br>1986:15, 1993:7,<br>1998:6, 1998:9,<br>1998:10, 2011:9<br><b>COUNSEL</b> [7] -<br>1979:15, 1999:2,<br>2008:13, 2008:18,<br>2011:19, 2012:11,<br>2012:14<br><b>COUNTER</b> [3] -<br>2011:2, 2011:6<br><b>COUNTER-CLAIM</b> [2]<br>- 2011:2, 2011:6<br><b>COUNTER-</b><br><b>DEFENDANT</b> [1] -<br>2011:6<br><b>COUNTERPART</b> [2] -<br>1992:19, 1992:23<br><b>COUNTY</b> [3] -<br>2003:24, 2004:16, | 2007:22<br><b>COUNTY</b> [6] -<br>1993:13, 1993:14,<br>1993:16, 1997:16,<br>2007:6, 2007:8<br><b>COURSE</b> [2] - 2009:8,<br>2012:21<br><b>COURT</b> [36] - 1969:4,<br>1969:17, 1969:20,<br>1970:5, 1970:8,<br>1970:18, 1971:3,<br>1973:6, 1974:2,<br>1974:9, 1975:16,<br>1977:6, 1978:11,<br>1978:20, 1979:18,<br>1984:17, 1985:2,<br>1986:7, 1986:8,<br>1987:2, 1988:22,<br>1989:2, 1992:17,<br>1998:18, 2006:8,<br>2006:25, 2007:17,<br>2007:18, 2008:20,<br>2009:9, 2009:17,<br>2011:21, 2012:16,<br>2015:13<br><b>COURT</b> [140] - 1968:5,<br>1968:12, 1969:7,<br>1969:12, 1970:8,<br>1970:15, 1971:9,<br>1971:23, 1972:2,<br>1972:6, 1972:9,<br>1972:11, 1972:17,<br>1973:7, 1973:16,<br>1974:2, 1974:5,<br>1974:21, 1975:5,<br>1975:9, 1976:8,<br>1976:12, 1976:18,<br>1976:24, 1977:10,<br>1977:23, 1978:8,<br>1978:16, 1979:1,<br>1979:10, 1980:1,<br>1980:4, 1980:16,<br>1980:21, 1981:7,<br>1982:3, 1982:8,<br>1982:22, 1983:1,<br>1983:5, 1983:12,<br>1983:20, 1984:3,<br>1984:6, 1984:8,<br>1984:19, 1985:11,<br>1986:7, 1986:22,<br>1987:4, 1987:15,<br>1988:7, 1988:16,<br>1989:4, 1989:20,<br>1989:24, 1990:10,<br>1990:14, 1990:25,<br>1991:13, 1991:16,<br>1991:22, 1992:2,<br>1992:9, 1992:16,<br>1992:22, 1993:12,<br>1993:21, 1994:4,<br>1994:8, 1994:14, | 1994:17, 1994:19,<br>1995:8, 1995:10,<br>1995:13, 1995:20,<br>1996:6, 1996:22,<br>1997:4, 1997:10,<br>1997:15, 1997:20,<br>1997:23, 1998:1,<br>1998:12, 1998:23,<br>1999:6, 1999:18,<br>2000:1, 2000:5,<br>2000:8, 2001:3,<br>2001:8, 2001:12,<br>2002:5, 2002:13,<br>2002:20, 2002:23,<br>2003:9, 2004:7,<br>2004:10, 2004:20,<br>2005:3, 2005:8,<br>2005:23, 2006:7,<br>2006:21, 2006:25,<br>2007:5, 2007:11,<br>2007:16, 2008:1,<br>2008:3, 2008:10,<br>2009:1, 2009:8,<br>2009:22, 2010:2,<br>2010:8, 2010:10,<br>2010:17, 2011:17,<br>2011:24, 2012:8,<br>2013:4, 2013:6,<br>2013:12, 2013:17,<br>2013:21, 2013:25,<br>2014:3, 2014:14,<br>2015:1, 2015:8,<br>2015:15, 2015:23,<br>2016:16, 2017:2,<br>2017:9<br><b>COURT'S</b> [9] - 1968:9,<br>1970:20, 1986:18,<br>1989:2, 1994:20,<br>1994:21, 2004:11,<br>2008:23, 2015:4<br><b>COVERED</b> [1] -<br>1998:10<br><b>CREATE</b> [2] -<br>1995:22, 2002:6<br><b>CREATING</b> [1] -<br>2001:3<br><b>CROSS</b> [7] - 1979:15,<br>2009:7, 2009:12,<br>2009:18, 2009:19,<br>2010:22, 2011:2<br><b>CROSS-CLAIMS</b> [2] -<br>2009:18, 2009:19<br><b>CROSS-COMPLAINT</b><br>[4] - 2009:7, 2009:12,<br>2010:22, 2011:2<br><b>CRUNCH</b> [1] - 1970:14<br><b>CRUZ</b> [1] - 1974:1<br><b>CUT</b> [1] - 1991:23 | <b>D</b><br><b>DAMAGE</b> [20] -<br>1974:5, 1975:14,<br>1979:14, 1984:12,<br>1985:23, 1986:1,<br>1986:5, 1987:10,<br>1987:12, 1987:13,<br>1988:1, 1988:2,<br>1988:3, 1988:5,<br>1988:12, 1989:6,<br>1989:12, 1989:16<br><b>DAMAGED</b> [4] -<br>1980:10, 1986:2,<br>2010:15, 2011:4<br><b>DAMAGES</b> [16] -<br>1972:3, 1974:23,<br>1977:1, 1977:3,<br>1980:9, 1984:9,<br>1986:12, 1988:23,<br>1989:8, 1989:9,<br>1989:18, 1990:8,<br>1991:8, 1993:10,<br>1995:18, 2003:5<br><b>DAWSON'S</b> [2] -<br>2013:11, 2013:14<br><b>DAYLIGHT</b> [1] -<br>2015:19<br><b>DEAL</b> [2] - 1969:20,<br>1999:5<br><b>DEALING</b> [3] -<br>1980:15, 1984:16,<br>2008:16<br><b>DEALT</b> [1] - 2002:12<br><b>DECEMBER</b> [1] -<br>1968:1<br><b>DECIDE</b> [9] - 1971:15,<br>1971:16, 1973:5,<br>1985:8, 1985:24,<br>1988:10, 1996:10,<br>1997:10, 1997:11<br><b>DECIDED</b> [3] -<br>1984:24, 1985:2,<br>2002:3<br><b>DECISION</b> [1] -<br>1990:10<br><b>DECK</b> [1] - 2009:4<br><b>DEEMED</b> [1] - 2014:10<br><b>DEFENDANT</b> [4] -<br>1979:19, 1990:18,<br>2006:2, 2011:6<br><b>DEFENDANTS</b> [2] -<br>1990:18, 1991:20<br><b>DEFENDING</b> [1] -<br>2002:17<br><b>DEFENSE</b> [2] -<br>1974:17, 2004:23<br><b>DEFENSES</b> [1] -<br>2005:5<br><b>DEFER</b> [1] - 2011:24 | <b>DEFINITELY</b> [1] -<br>2001:24<br><b>DEFINITION</b> [1] -<br>1969:1<br><b>DEMONSTRATE</b> [4] -<br>1974:15, 1986:9,<br>1986:11, 1989:6<br><b>DEMONSTRATION</b> [1]<br>- 1986:14<br><b>DENIED</b> [1] - 1988:22<br><b>DEPOSIT</b> [1] - 1995:5<br><b>DEPOSITED</b> [1] -<br>1995:22<br><b>DEPOSITION</b> [1] -<br>1968:23<br><b>DESCRIBE</b> [1] -<br>1969:23<br><b>DESCRIBED</b> [1] -<br>1970:6<br><b>DESCRIPTION</b> [1] -<br>1970:4<br><b>DESIGNATION</b> [1] -<br>2002:2<br><b>DETERMINATION</b> [2]<br>- 1998:15, 2016:2<br><b>DETERMINE</b> [2] -<br>1985:7, 1992:10<br><b>DETERMINING</b> [1] -<br>1991:1<br><b>DICING</b> [1] - 1979:23<br><b>DIE</b> [1] - 1972:16<br><b>DIFFERENCE</b> [1] -<br>2001:17<br><b>DIFFERENT</b> [10] -<br>1969:19, 1973:22,<br>1981:5, 1982:14,<br>1987:11, 1992:2,<br>1998:3, 2010:16,<br>2014:20, 2016:11<br><b>DIFFICULTY</b> [1] -<br>2000:18<br><b>DIMINUTION</b> [15] -<br>1974:6, 1974:10,<br>1974:12, 1974:16,<br>1974:18, 1974:20,<br>1974:22, 1975:19,<br>1976:6, 1976:17,<br>1976:21, 1977:2,<br>1979:17, 1983:16<br><b>DIRECT</b> [1] - 2011:3<br><b>DIRECTED</b> [1] -<br>2013:15<br><b>DISAGREE</b> [1] -<br>1970:7<br><b>DISCHARGE</b> [2] -<br>2004:17<br><b>DISCHARGING</b> [1] -<br>1994:3<br><b>DISCOVERY</b> [2] -<br>1999:16, 2008:1 |
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| <p><b>DISCUSS</b> [3] - 1973:9, 2012:4, 2013:7</p> <p><b>DISCUSSING</b> [2] - 1979:13, 1991:4</p> <p><b>DISCUSSION</b> [5] - 1980:7, 2000:9, 2012:7, 2012:12, 2016:20</p> <p><b>DISMISS</b> [2] - 1977:6, 2010:6</p> <p><b>DISPOSAL</b> [3] - 1993:17, 1995:5, 2006:11</p> <p><b>DISPOSE</b> [1] - 2000:12</p> <p><b>DISPOSED</b> [1] - 1995:2</p> <p><b>DISPOSING</b> [1] - 1968:19</p> <p><b>DISPUTED</b> [1] - 2011:25</p> <p><b>DISTILLED</b> [1] - 2000:16</p> <p><b>DISTINCTION</b> [1] - 1981:18</p> <p><b>DISTINGUISHED</b> [1] - 1982:20</p> <p><b>DISTRIBUTION</b> [1] - 1983:10</p> <p><b>DISTRICT</b> [1] - 2003:24</p> <p><b>DOCTRINAL</b> [1] - 1991:22</p> <p><b>DONE</b> [4] - 2002:10, 2013:22, 2015:3, 2015:21</p> <p><b>DOWN</b> [3] - 1987:24, 1989:3, 2007:18</p> <p><b>DRAWING</b> [1] - 1975:3</p> <p><b>DRAWN</b> [1] - 1970:2</p> <p><b>DRINKING</b> [1] - 1991:11</p> <p><b>DRIVING</b> [2] - 1996:6, 1998:4</p> <p><b>DTSC</b> [1] - 1998:11</p> <p><b>DUMPING</b> [1] - 1991:9</p> <p><b>DURING</b> [1] - 2014:7</p> <p><b>DUTY</b> [1] - 2011:1</p> | <p><b>ECONOMIC</b> [2] - 1972:3, 1973:3</p> <p><b>EFFECT</b> [2] - 1971:24, 1982:7</p> <p><b>EITHER</b> [10] - 1969:23, 1974:22, 1980:19, 1981:1, 1994:12, 1996:9, 1998:3, 1998:12, 2014:20, 2016:9</p> <p><b>ENDED</b> [1] - 1978:1</p> <p><b>ENFORCEMENT</b> [1] - 1990:23</p> <p><b>ENTERED</b> [1] - 1973:25</p> <p><b>ENTIRE</b> [2] - 2002:18, 2010:21</p> <p><b>ENTITIES</b> [2] - 1993:6, 1997:18</p> <p><b>ENTITLED</b> [5] - 1980:9, 1994:11, 1994:19, 2006:2, 2017:5</p> <p><b>ENTITY</b> [1] - 1998:9</p> <p><b>EPA</b> [2] - 2006:9, 2006:17</p> <p><b>EQUATION</b> [1] - 2015:9</p> <p><b>EQUILIBRIUM</b> [1] - 1981:12</p> <p><b>EQUIVALENCE</b> [1] - 1975:13</p> <p><b>ESPECIALLY</b> [1] - 2008:15</p> <p><b>ESSENTIALLY</b> [6] - 1968:24, 1970:21, 1975:6, 1991:1, 1991:9, 2014:15</p> <p><b>ESTABLISHES</b> [1] - 1991:1</p> <p><b>ETHICAL</b> [1] - 2010:6</p> <p><b>EVALUATION</b> [2] - 1974:13, 1991:16</p> <p><b>EVENING</b> [2] - 1988:20, 2017:10</p> <p><b>EVENT</b> [1] - 1973:20</p> <p><b>EVIDENCE</b> [87] - 1970:1, 1970:6, 1970:21, 1973:11, 1973:17, 1973:25, 1974:10, 1974:11, 1974:18, 1974:19, 1974:21, 1974:24, 1975:1, 1975:13, 1976:1, 1976:7, 1976:8, 1976:16, 1976:17, 1977:5, 1977:7, 1977:8, 1977:10, 1977:14, 1977:15, 1977:24,</p> | <p>1978:2, 1978:7, 1978:8, 1978:9, 1978:12, 1978:15, 1978:16, 1979:2, 1979:5, 1979:6, 1979:7, 1979:8, 1979:19, 1980:7, 1980:16, 1980:18, 1981:8, 1981:18, 1981:25, 1982:3, 1982:11, 1982:19, 1983:6, 1983:15, 1985:25, 1987:19, 1988:5, 1990:6, 1993:22, 1994:4, 1994:7, 1994:8, 1994:12, 1994:15, 1994:24, 1996:3, 1999:24, 1999:25, 2000:4, 2000:23, 2004:5, 2004:23, 2005:19, 2006:1, 2006:19, 2006:23, 2007:23, 2007:25, 2008:6, 2009:15, 2011:11, 2014:17, 2014:20, 2015:5, 2015:17, 2016:9, 2016:10, 2016:12, 2017:6</p> <p><b>EVIDENTIARY</b> [1] - 1989:19</p> <p><b>EX</b> [1] - 2012:17</p> <p><b>EXACTLY</b> [2] - 1989:14, 1989:17</p> <p><b>EXAMPLE</b> [2] - 1998:11, 2000:15</p> <p><b>EXCEPT</b> [2] - 1987:23, 2003:16</p> <p><b>EXCLUDE</b> [1] - 1989:7</p> <p><b>EXCLUSIVE</b> [2] - 1980:19, 1981:1</p> <p><b>EXIST</b> [2] - 1978:15, 1978:17</p> <p><b>EXISTED</b> [1] - 2004:6</p> <p><b>EXPECT</b> [3] - 2009:20, 2011:23, 2012:22</p> <p><b>EXPERT</b> [2] - 1999:17, 2002:2</p> <p><b>EXPLAIN</b> [1] - 2016:4</p> <p><b>EXTENT</b> [5] - 1982:11, 1998:4, 2011:7, 2011:9, 2012:20</p> | <p>1995:1, 2001:15, 2002:1</p> <p><b>FACTOR</b> [2] - 1989:11, 2006:13</p> <p><b>FACTORS</b> [1] - 1986:16</p> <p><b>FACTORY</b> [1] - 1986:5</p> <p><b>FACTS</b> [3] - 1983:25, 1985:16, 2014:7</p> <p><b>FACTUAL</b> [2] - 1985:11, 1985:15</p> <p><b>FAIR</b> [1] - 1990:2</p> <p><b>FAIRLY</b> [4] - 1968:21, 1973:16, 1983:24, 2004:15</p> <p><b>FALLS</b> [1] - 1979:19</p> <p><b>FAMILIAR</b> [2] - 1975:6, 1991:13</p> <p><b>FAR</b> [1] - 1973:21</p> <p><b>FASHION</b> [1] - 2015:2</p> <p><b>FAULT</b> [1] - 1969:9</p> <p><b>FAVOR</b> [1] - 1991:23</p> <p><b>FEDERAL</b> [1] - 2003:10</p> <p><b>FEDERAL</b> [3] - 1992:23, 2002:13, 2007:7</p> <p><b>FEET</b> [1] - 1978:6</p> <p><b>FIFTH</b> [1] - 2011:6</p> <p><b>FIGHTING</b> [1] - 2001:19</p> <p><b>FIGURE</b> [1] - 1987:5</p> <p><b>FILED</b> [1] - 2015:18</p> <p><b>FILLED</b> [2] - 1996:17, 1997:6</p> <p><b>FINAL</b> [3] - 2009:20, 2012:20, 2012:23</p> <p><b>FINE</b> [11] - 1968:12, 1973:16, 1975:3, 1984:3, 1984:6, 1986:22, 2011:24, 2012:22, 2013:17, 2014:1, 2016:15</p> <p><b>FIRST</b> [5] - 1980:16, 1986:19, 2002:15, 2013:8, 2013:10</p> <p><b>FIT</b> [3] - 1983:17, 1983:25</p> <p><b>FOCUS</b> [1] - 2000:19</p> <p><b>FOCUSED</b> [2] - 1999:11, 2010:24</p> <p><b>FORM</b> [3] - 1998:18, 2002:20, 2011:13</p> <p><b>FORTH</b> [2] - 1981:13, 1981:17</p> <p><b>FORWARD</b> [2] - 1975:25, 1976:15</p> <p><b>FOUL</b> [1] - 1975:9</p> <p><b>FOUR</b> [1] - 1998:3</p> <p><b>FRANKLY</b> [1] -</p> | <p>1972:25</p> <p><b>FRONT</b> [2] - 1993:5, 2009:20</p> <p><b>FULLY</b> [2] - 1983:11, 1990:12</p> <p><b>FUNNY</b> [1] - 1972:13</p> |  |
| <b>G</b>   |  |   |  |   |  |
|  | <p><b>GALLAGHER</b> [2] - 1972:14, 1973:4</p> <p><b>GEE</b> [45] - 1990:4, 1990:12, 1990:17, 1991:5, 1991:15, 1991:19, 1991:25, 1992:4, 1992:15, 1992:20, 1992:24, 1993:14, 1994:1, 1994:6, 1994:10, 1994:16, 1994:18, 1995:1, 1995:9, 1995:12, 1995:16, 1996:2, 1996:20, 1997:1, 1997:9, 1997:14, 1997:16, 1997:22, 1997:25, 1998:5, 1998:22, 2004:14, 2005:1, 2005:4, 2005:13, 2006:4, 2006:17, 2006:23, 2007:3, 2007:9, 2007:12, 2007:21, 2008:2, 2008:5, 2008:25</p> <p><b>GEE</b> [9] - 1989:25, 1995:10, 1997:21, 1998:12, 2002:20, 2004:10, 2005:23, 2008:4</p> <p><b>GENERAL</b> [1] - 2006:9</p> <p><b>GENERAL'S</b> [1] - 2003:25</p> <p><b>GENERALLY</b> [3] - 1991:13, 2003:15, 2017:8</p> <p><b>GENERATION</b> [1] - 2006:11</p> <p><b>GEOGRAPHICAL</b> [1] - 1969:25</p> <p><b>GEOLOGISTS</b> [1] - 1981:11</p> <p><b>GIVEN</b> [5] - 1973:14, 1979:20, 1994:11, 2006:25, 2007:1</p> <p><b>GREATER</b> [1] - 1985:19</p> <p><b>GROUND</b> [4] - 2000:13, 2000:16, 2004:22, 2005:11</p> <p><b>GROUNDS</b> [1] -</p>   |   |  |   |  |

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|--|--|---|---|--|
| <p>2014:22<br/> <b>GROUNDWATER</b><sup>[27]</sup><br/> - 1974:12, 1975:17,<br/> 1975:18, 1975:20,<br/> 1975:22, 1975:25,<br/> 1977:9, 1977:12,<br/> 1978:4, 1979:9,<br/> 1980:13, 1981:8,<br/> 1981:13, 1981:14,<br/> 1981:24, 1982:5,<br/> 1982:7, 1982:9,<br/> 1982:10, 1982:16,<br/> 1982:17, 1982:21,<br/> 1993:4, 1993:20,<br/> 1998:7, 2004:19,<br/> 2006:24<br/> <b>GUESS</b><sup>[4]</sup> - 1990:17,<br/> 1991:5, 1991:25,<br/> 1997:1</p>  | <p><b>HIRING</b><sup>[1]</sup> - 2005:1<br/> <b>HOKKANEN</b><sup>[3]</sup> -<br/> 1968:15, 1973:18,<br/> 1973:24<br/> <b>HOKKANEN'S</b><sup>[2]</sup> -<br/> 1968:9, 1973:11<br/> <b>HOME</b><sup>[1]</sup> - 1989:16<br/> <b>HONESTLY</b><sup>[1]</sup> -<br/> 1968:11<br/> <b>HONOR</b><sup>[61]</sup> -<br/> 1968:10, 1969:2,<br/> 1970:11, 1971:2,<br/> 1972:13, 1972:15,<br/> 1973:22, 1974:19,<br/> 1974:24, 1975:21,<br/> 1976:10, 1976:14,<br/> 1978:3, 1978:15,<br/> 1979:12, 1983:9,<br/> 1984:1, 1984:14,<br/> 1985:3, 1985:16,<br/> 1986:19, 1987:1,<br/> 1987:9, 1987:24,<br/> 1988:13, 1989:14,<br/> 1989:23, 1990:17,<br/> 1991:5, 1991:19,<br/> 1994:1, 1997:1,<br/> 1998:5, 1998:22,<br/> 1999:4, 1999:13,<br/> 1999:23, 2000:11,<br/> 2002:15, 2004:9,<br/> 2004:14, 2005:13,<br/> 2006:4, 2008:5,<br/> 2008:25, 2010:1,<br/> 2010:4, 2010:5,<br/> 2010:23, 2013:3,<br/> 2013:5, 2013:10,<br/> 2013:20, 2013:24,<br/> 2014:2, 2014:19,<br/> 2015:3, 2015:11,<br/> 2015:21, 2016:15,<br/> 2016:20<br/> <b>HONOR'S</b><sup>[1]</sup> -<br/> 1982:19<br/> <b>HOPE</b><sup>[1]</sup> - 1988:18<br/> <b>HOURS</b><sup>[1]</sup> - 2011:19<br/> <b>HUGHTO</b><sup>[1]</sup> - 2004:5</p> | <p><b>IMPLEMENTED</b><sup>[1]</sup> -<br/> 2006:24<br/> <b>IMPORTANT</b><sup>[1]</sup> -<br/> 2008:13<br/> <b>IMPROPER</b><sup>[1]</sup> -<br/> 2017:4<br/> <b>IMPROVE</b><sup>[1]</sup> - 1990:7<br/> <b>INAPPROPRIATE</b><sup>[1]</sup> -<br/> 2016:25<br/> <b>INCIDENTALLY</b><sup>[1]</sup> -<br/> 1974:11<br/> <b>INCLINED</b><sup>[1]</sup> -<br/> 1983:13<br/> <b>INCLUDING</b><sup>[4]</sup> -<br/> 1972:24, 2004:23,<br/> 2006:10, 2014:22<br/> <b>INCORRECT</b><sup>[4]</sup> -<br/> 1980:6, 1986:25,<br/> 1987:2, 1996:19<br/> <b>INCURRED</b><sup>[1]</sup> -<br/> 1990:8<br/> <b>INDICATE</b><sup>[2]</sup> -<br/> 1984:19, 2010:20<br/> <b>INDICATED</b><sup>[4]</sup> -<br/> 1980:5, 1988:20,<br/> 2012:12, 2012:19<br/> <b>INDICATES</b><sup>[1]</sup> -<br/> 2002:6<br/> <b>INFER</b><sup>[2]</sup> - 1976:6,<br/> 1978:4<br/> <b>INFERENCES</b><sup>[1]</sup> -<br/> 2016:9<br/> <b>INFERRING</b><sup>[1]</sup> -<br/> 1977:18<br/> <b>INFINITESIMAL</b><sup>[1]</sup> -<br/> 1971:18<br/> <b>INFORMATION</b><sup>[1]</sup> -<br/> 2008:19<br/> <b>INJURY</b><sup>[1]</sup> - 1999:19<br/> <b>INSTANCE</b><sup>[11]</sup> -<br/> 1971:14, 1971:16,<br/> 1978:3, 1978:23,<br/> 1985:17, 1998:5,<br/> 1999:15, 2000:14,<br/> 2000:20, 2006:24,<br/> 2015:12<br/> <b>INSTRUCT</b><sup>[1]</sup> -<br/> 2005:24<br/> <b>INSTRUCTED</b><sup>[1]</sup> -<br/> 2009:18<br/> <b>INSTRUCTION</b><sup>[33]</sup> -<br/> 1969:8, 1969:14,<br/> 1972:23, 1973:12,<br/> 1973:13, 1979:13,<br/> 1979:16, 1979:20,<br/> 1979:21, 1980:8,<br/> 1980:15, 1981:5,<br/> 1981:6, 1983:14,<br/> 1983:24, 1983:25,<br/> 1984:2, 1984:3,</p> | <p>1984:5, 1984:13,<br/> 1985:12, 1986:24,<br/> 1987:6, 1988:12,<br/> 1994:20, 1994:22,<br/> 1996:24, 1998:17,<br/> 1998:25, 2000:4,<br/> 2001:14, 2007:4,<br/> 2007:19<br/> <b>INSTRUCTIONS</b><sup>[7]</sup> -<br/> 1988:1, 1988:19,<br/> 1988:20, 1988:24,<br/> 2000:9, 2006:8,<br/> 2012:3<br/> <b>INSUFFICIENT</b><sup>[1]</sup> -<br/> 2015:17<br/> <b>INTEND</b><sup>[2]</sup> - 2010:13,<br/> 2010:14<br/> <b>INTENDING</b><sup>[1]</sup> -<br/> 2009:16<br/> <b>INTENDS</b><sup>[1]</sup> -<br/> 2012:11<br/> <b>INTENT</b><sup>[1]</sup> - 2003:6<br/> <b>INTENTIONALLY</b><sup>[1]</sup> -<br/> 2015:11<br/> <b>INTEREST</b><sup>[6]</sup> -<br/> 1975:1, 1978:19,<br/> 1978:22, 1984:21,<br/> 1985:5, 1986:10<br/> <b>INTERESTING</b><sup>[1]</sup> -<br/> 1981:25<br/> <b>INTERFERED</b><sup>[2]</sup> -<br/> 1978:24, 1985:21<br/> <b>INTERRUPT</b><sup>[2]</sup> -<br/> 2014:4, 2014:5<br/> <b>INTERRUPTING</b><sup>[1]</sup> -<br/> 1995:10<br/> <b>INTRODUCED</b><sup>[1]</sup> -<br/> 1993:22<br/> <b>INTRODUCTION</b><sup>[3]</sup> -<br/> 1980:11, 1982:8,<br/> 2001:13<br/> <b>INVASION</b><sup>[2]</sup> -<br/> 1985:7, 1985:8<br/> <b>INVESTIGATION</b><sup>[2]</sup> -<br/> 1968:18, 1998:7<br/> <b>INVOLVING</b><sup>[1]</sup> -<br/> 1973:3<br/> <b>IOTA</b><sup>[1]</sup> - 1976:4<br/> <b>ISSUE</b><sup>[33]</sup> - 1973:2,<br/> 1973:23, 1974:6,<br/> 1977:4, 1979:21,<br/> 1980:15, 1983:20,<br/> 1984:14, 1984:23,<br/> 1984:24, 1985:2,<br/> 1985:4, 1985:17,<br/> 1986:1, 1988:25,<br/> 1989:3, 1989:22,<br/> 1990:13, 1991:3,<br/> 1992:1, 1994:9,<br/> 1996:1, 2000:21,</p> | <p>2000:23, 2001:1,<br/> 2004:8, 2008:1,<br/> 2008:13, 2008:14,<br/> 2009:11, 2011:12,<br/> 2011:25, 2014:9<br/> <b>ISSUES</b><sup>[5]</sup> - 1973:9,<br/> 2000:25, 2002:11,<br/> 2013:16, 2014:8<br/> <b>ITSELF</b><sup>[2]</sup> - 1975:24,<br/> 1981:14</p>  |
| <b>H</b>   |  |   |   | <b>J</b>   |
| <p><b>HALFWAY</b><sup>[1]</sup> -<br/> 2001:1<br/> <b>HANG</b><sup>[1]</sup> - 1995:3<br/> <b>HAPPY</b><sup>[1]</sup> - 1970:9<br/> <b>HARD</b><sup>[2]</sup> - 1999:10,<br/> 2001:19<br/> <b>HARM</b><sup>[12]</sup> - 1972:7,<br/> 1972:9, 1973:3,<br/> 1975:9, 1975:18,<br/> 1999:15, 2001:6,<br/> 2001:7, 2001:11,<br/> 2006:13, 2009:15,<br/> 2011:11<br/> <b>HARMFUL</b><sup>[3]</sup> -<br/> 1991:10, 1991:11<br/> <b>HAZARDOUS</b><sup>[2]</sup> -<br/> 2006:10, 2006:12<br/> <b>HEALTH</b><sup>[8]</sup> - 1991:10,<br/> 1991:11, 1995:6,<br/> 1995:23, 1999:15,<br/> 1999:19, 2001:7,<br/> 2001:11<br/> <b>HEAR</b><sup>[12]</sup> - 1973:8,<br/> 1974:17, 1979:10,<br/> 1983:21, 1984:22,<br/> 1988:17, 1989:24,<br/> 1999:3, 2004:10,<br/> 2010:18, 2016:24,<br/> 2017:2<br/> <b>HEARD</b><sup>[9]</sup> - 1974:18,<br/> 1979:22, 1981:11,<br/> 1981:15, 1983:17,<br/> 1983:22, 1997:11,<br/> 2004:25, 2017:3<br/> <b>HEARING</b><sup>[1]</sup> -<br/> 2012:21<br/> <b>HELP</b><sup>[1]</sup> - 2010:19<br/> <b>HILL</b><sup>[1]</sup> - 1972:15</p> |  |   |   | <p><b>JMOL</b><sup>[5]</sup> - 2000:10,<br/> 2001:10, 2013:16,<br/> 2014:10, 2015:18<br/> <b>JOB</b><sup>[1]</sup> - 2016:7<br/> <b>JOINT</b><sup>[1]</sup> - 1972:2<br/> <b>JUDGE</b><sup>[2]</sup> - 1985:1,<br/> 1986:23<br/> <b>JUDGE</b><sup>[1]</sup> - 2006:15<br/> <b>JUDGMENT</b><sup>[1]</sup> -<br/> 1980:6<br/> <b>JURIES</b><sup>[1]</sup> - 1971:22<br/> <b>JURY</b><sup>[42]</sup> - 1968:4,<br/> 1969:8, 1970:4,<br/> 1970:23, 1971:3,<br/> 1971:4, 1971:11,<br/> 1972:20, 1976:6,<br/> 1976:25, 1981:5,<br/> 1981:6, 1984:15,<br/> 1985:6, 1985:8,<br/> 1985:24, 1986:14,<br/> 1987:22, 1988:9,<br/> 1989:19, 1994:15,<br/> 1995:20, 1996:10,<br/> 1997:4, 1997:21,<br/> 1998:1, 1998:2,<br/> 1998:19, 2000:4,<br/> 2000:9, 2001:20,<br/> 2004:4, 2005:24,<br/> 2006:8, 2006:16,<br/> 2006:22, 2007:3,<br/> 2009:13, 2009:18,<br/> 2009:20, 2010:25,<br/> 2012:3<br/> <b>JURY'S</b><sup>[1]</sup> - 1998:14</p> |
|  | <b>I</b>   |   |   | <b>K</b>   |
|  | <p><b>IDEA</b><sup>[1]</sup> - 2003:14<br/> <b>IDENTIFIED</b><sup>[1]</sup> -<br/> 1969:4<br/> <b>IDENTIFY</b><sup>[4]</sup> -<br/> 1968:15, 1968:17,<br/> 1969:12, 1969:14<br/> <b>IMPACT</b><sup>[1]</sup> - 1978:12<br/> <b>IMPACTED</b><sup>[1]</sup> -<br/> 1986:11<br/> <b>IMPLEMENT</b><sup>[1]</sup> -<br/> 2005:17</p>  |   |   | <p><b>KEITH</b><sup>[1]</sup> - 1981:3<br/> <b>KEY</b><sup>[2]</sup> - 1975:24,<br/> 1979:7<br/> <b>KIND</b><sup>[1]</sup> - 1971:14<br/> <b>KNOWING</b><sup>[1]</sup> -<br/> 1985:9<br/> <b>KNOWN</b><sup>[2]</sup> - 1971:19,<br/> 2000:23<br/> <b>KNOWS</b><sup>[1]</sup> - 1978:20</p>   |



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| <div>L</div> <div>L.A [6] - 1993:13, 1993:14, 1993:16, 1997:16, 2007:6, 2007:8</div> <div>LACK [1] - 1993:24</div> <div>LAND [25] - 1975:20, 1975:22, 1975:24, 1976:1, 1976:8, 1976:18, 1976:19, 1977:2, 1977:4, 1977:5, 1977:8, 1977:14, 1977:16, 1978:1, 1978:3, 1978:5, 1979:6, 1979:8, 1981:1, 1981:14, 1981:16, 1981:22, 1983:16, 1985:19</div> <div>LARGE [1] - 2006:3</div> <div>LARGELY [1] - 1998:3</div> <div>LAST [7] - 1971:23, 1972:14, 1979:5, 1987:25, 2001:13, 2002:5</div> <div>LATE [2] - 1968:12, 2006:19</div> <div>LAUNDRY [1] - 1996:17</div> <div>LAW [19] - 1970:10, 1979:23, 1986:3, 1990:3, 1990:23, 1992:10, 1992:13, 1995:15, 1996:9, 1999:10, 2003:5, 2005:25, 2006:1, 2006:2, 2006:3, 2007:1, 2007:5, 2007:7</div> <div>LEASE [1] - 1977:19</div> <div>LEAST [4] - 1970:25, 1972:3, 1985:13, 2017:1</div> <div>LEAVES [1] - 2010:18</div> <div>LECTERN [1] - 1984:9</div> <div>LEGAL [4] - 1970:7, 1970:20, 1983:17, 1989:5</div> <div>LEGALLY [1] - 1974:15</div> <div>LESS [4] - 1972:1, 1972:6, 1974:23, 2007:20</div> <div>LEVEL [1] - 1975:11</div> <div>LIABILITY [7] - 1971:7, 1971:21, 1972:3, 1991:14, 1991:23, 2011:8, 2011:10</div> | <div>LIABLE [2] - 1971:16, 2011:8</div> <div>LICENSE [2] - 1977:19, 1978:25</div> <div>LIGHT [2] - 1975:7, 2004:20</div> <div>LIKELY [2] - 1973:8, 2014:21</div> <div>LIMINE [1] - 1988:23</div> <div>LIMIT [1] - 2003:21</div> <div>LIMITATIONS [1] - 2003:2</div> <div>LIMITED [3] - 2002:24, 2003:3, 2012:20</div> <div>LINE [1] - 2011:7</div> <div>LIST [2] - 1996:17, 2007:3</div> <div>LISTENING [1] - 1997:23</div> <div>LOCATION [1] - 1969:6</div> <div>LOOK [13] - 1970:19, 1972:17, 1975:3, 1976:25, 1979:5, 1979:6, 1987:17, 1990:20, 1991:6, 1991:9, 2007:12, 2007:15, 2008:22</div> <div>LOOKED [1] - 1992:15</div> <div>LOOKING [6] - 1968:17, 1984:4, 1992:10, 1999:7, 1999:9</div> <div>LOOKS [1] - 2012:3</div> <div>LOS [1] - 1968:2</div> <div>LOSE [4] - 1987:23, 1995:25, 2000:10</div> <div>LOSS [4] - 1983:21, 1983:24, 1984:9, 1984:20</div> <div>LOST [2] - 1976:22, 1994:12</div> | <div>2013:1</div> <div>MATERIALS [1] - 1995:2</div> <div>MATTER [10] - 1983:13, 1985:14, 1988:18, 1993:23, 1998:2, 1999:10, 2008:11, 2008:12, 2010:24</div> <div>MATTERS [2] - 1973:2, 2009:24</div> <div>MCL [1] - 1975:13</div> <div>MCLS [1] - 1975:13</div> <div>MEAN [9] - 1971:2, 1974:19, 1975:7, 1982:13, 2000:14, 2002:12, 2004:15, 2005:1, 2005:20</div> <div>MEANT [2] - 1991:8, 2003:4</div> <div>MEET [1] - 1981:5</div> <div>MENACE [2] - 1995:6, 1995:23</div> <div>MENTIONED [2] - 1992:5, 2004:13</div> <div>MERGER [1] - 1980:25</div> <div>MET [1] - 2009:10</div> <div>MICROPHONE [1] - 2013:12</div> <div>MIGHT [2] - 1996:14, 2011:10</div> <div>MIGRATION [2] - 1977:24, 1978:9</div> <div>MIMICS [1] - 1992:20</div> <div>MIND [3] - 1998:2, 2007:17, 2010:16</div> <div>MINORITY [1] - 1990:10</div> <div>MINUTE [1] - 2001:13</div> <div>MISREMEMBERING [1] - 1998:20</div> <div>MODIFIED [1] - 1983:25</div> <div>MOMENT [2] - 2010:5, 2012:4</div> <div>MONITORING [1] - 2006:24</div> <div>MONTHS [1] - 2011:14</div> <div>MORNING [5] - 1970:13, 2008:24, 2009:3, 2011:22, 2012:13</div> <div>MOST [4] - 1970:5, 1988:19, 1990:14, 2014:21</div> <div>MOTION [9] - 1988:22, 1988:23, 2000:6, 2009:7, 2010:19, 2010:21, 2013:15,</div> | <div>2013:19</div> <div>MOUNTED [1] - 2004:23</div> <div>MOVE [2] - 1983:20, 1992:16</div> <div>MOVED [1] - 1978:6</div> <div>MOVEMENT [1] - 1977:15</div> <div>MOVING [1] - 2005:9</div> <div>MR [139] - 1968:10, 1969:2, 1969:10, 1969:17, 1970:11, 1971:2, 1971:15, 1972:1, 1972:5, 1972:8, 1972:10, 1972:13, 1973:4, 1973:10, 1973:22, 1974:4, 1974:19, 1974:24, 1975:8, 1975:21, 1976:10, 1976:14, 1976:20, 1977:3, 1977:13, 1977:25, 1978:14, 1978:18, 1979:4, 1979:12, 1980:3, 1980:12, 1980:18, 1980:23, 1981:10, 1982:6, 1982:13, 1982:25, 1983:2, 1983:8, 1983:19, 1984:1, 1984:5, 1984:7, 1984:14, 1985:3, 1985:16, 1986:19, 1987:1, 1987:9, 1987:24, 1988:11, 1988:21, 1989:14, 1989:22, 1990:4, 1990:12, 1990:17, 1991:5, 1991:15, 1991:19, 1991:25, 1992:4, 1992:15, 1992:20, 1992:24, 1993:14, 1994:1, 1994:6, 1994:10, 1994:16, 1994:18, 1995:1, 1995:9, 1995:12, 1995:16, 1996:2, 1996:20, 1997:1, 1997:9, 1997:14, 1997:16, 1997:22, 1997:25, 1998:5, 1998:22, 1999:4, 1999:13, 1999:23, 2000:3, 2000:7, 2000:11, 2001:5, 2001:10, 2001:17, 2002:11, 2002:15, 2002:22, 2002:24, 2003:11, 2004:9,</div> | <div>2004:14, 2005:1, 2005:4, 2005:13, 2006:4, 2006:17, 2006:23, 2007:3, 2007:9, 2007:12, 2007:21, 2008:2, 2008:5, 2008:25, 2009:6, 2009:9, 2010:1, 2010:4, 2010:9, 2010:13, 2010:23, 2011:19, 2013:3, 2013:5, 2013:10, 2013:13, 2013:20, 2013:24, 2014:1, 2014:4, 2014:19, 2015:3, 2015:11, 2015:21, 2016:15, 2016:19, 2017:8, 2017:11</div> <div>MUST [2] - 1970:22, 1984:10</div>   |
|  | <div>M</div> <div>MACHINERY [1] - 1975:2</div> <div>MAIL [2] - 1970:18, 1973:6</div> <div>MAJORITY [1] - 1989:25</div> <div>MALL [7] - 1969:5, 1969:11, 1971:4, 1971:12, 1971:19, 1972:25</div> <div>MAPS [1] - 1973:23</div> <div>MATERIAL [4] - 1975:18, 1993:17, 1995:5, 1995:22</div> <div>MATERIALLY [1] -</div>   |   |  | <div>N</div> <div>NAME [1] - 1969:23</div> <div>NATURE [1] - 1975:14</div> <div>NAVIGABLE [1] - 1993:2</div> <div>NEARBY [1] - 1968:19</div> <div>NECESSARILY [1] - 1999:8</div> <div>NECESSARY [1] - 1973:15</div> <div>NEED [9] - 1976:11, 1978:11, 1982:18, 1987:5, 1989:1, 1994:3, 2010:6, 2015:25, 2016:1</div> <div>NEEDS [2] - 1973:21, 1985:6</div> <div>NEGLIGENCE [27] - 1969:18, 1989:21, 1990:2, 1990:5, 1990:6, 1990:9, 1991:2, 1991:17, 1994:25, 1995:25, 1996:4, 1996:11, 1996:16, 1996:24, 1998:24, 2001:18, 2001:20, 2002:8, 2002:23, 2004:21, 2005:12, 2006:14, 2008:14, 2008:15, 2009:13, 2011:1, 2011:3</div> <div>NEGLIGENT [3] - 1969:9, 1970:25, 2010:14</div> <div>NEVER [3] - 2002:19, 2003:4, 2016:3</div> |

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| <b>NEW</b> <sup>[1]</sup> - 1980:25<br><b>NEXT</b> <sup>[2]</sup> - 1983:20, 1984:21<br><b>NIGHT</b> <sup>[1]</sup> - 1972:14<br><b>NINTH</b> <sup>[2]</sup> - 1979:24, 1981:20<br><b>NOBODY</b> <sup>[1]</sup> - 1978:20<br><b>NONDESCRIPT</b> <sup>[1]</sup> - 1969:15<br><b>NONE</b> <sup>[1]</sup> - 1971:8<br><b>NONECONOMIC</b> <sup>[2]</sup> - 1972:7, 1972:9<br><b>NONPARTY</b> <sup>[1]</sup> - 2011:10<br><b>NOTE</b> <sup>[1]</sup> - 1968:13<br><b>NOTHING</b> <sup>[3]</sup> - 1970:24, 1976:4, 1990:21<br><b>NOTICE</b> <sup>[2]</sup> - 2003:1, 2006:17<br><b>NOXIOUS</b> <sup>[1]</sup> - 1993:17<br><b>NPDES</b> <sup>[2]</sup> - 2007:13, 2007:14<br><b>NUISANCE</b> <sup>[14]</sup> - 1993:17, 1995:6, 1995:23, 1996:3, 1996:4, 2001:4, 2001:6, 2001:9, 2001:15, 2001:18, 2002:6, 2002:8, 2004:18, 2004:24<br><b>NUMBER</b> <sup>[2]</sup> - 1976:10, 1988:24 | <b>OFFERING</b> <sup>[1]</sup> - 1996:23<br><b>OFFICE</b> <sup>[1]</sup> - 2003:25<br><b>OFFSITE</b> <sup>[2]</sup> - 1977:24, 1978:9<br><b>ONCE</b> <sup>[3]</sup> - 1984:22, 1989:6, 2005:16<br><b>ONE</b> <sup>[28]</sup> - 1971:15, 1971:23, 1976:4, 1976:20, 1981:11, 1986:3, 1987:25, 1988:25, 1989:4, 1989:24, 1990:15, 1992:20, 1994:8, 1997:2, 1997:13, 1997:14, 1998:25, 1999:1, 2000:16, 2001:11, 2001:15, 2002:5, 2003:15, 2007:19, 2009:13, 2010:1, 2011:5, 2014:1<br><b>OOO</b> <sup>[1]</sup> - 1968:3<br><b>OPEN</b> <sup>[1]</sup> - 1991:9<br><b>OPENING</b> <sup>[2]</sup> - 2016:20, 2016:21<br><b>OPPORTUNITY</b> <sup>[2]</sup> - 2004:11, 2016:18<br><b>OPPOSED</b> <sup>[1]</sup> - 1975:20<br><b>OPTION</b> <sup>[1]</sup> - 1986:21<br><b>ORATOR</b> <sup>[1]</sup> - 2017:1<br><b>ORDER</b> <sup>[4]</sup> - 1976:15, 1987:9, 2001:5, 2012:1<br><b>ORDERED</b> <sup>[1]</sup> - 2012:9<br><b>ORDINANCE</b> <sup>[14]</sup> - 1993:16, 1994:23, 1994:24, 1996:7, 1997:13, 1997:14, 1999:1, 1999:6, 1999:12, 1999:20, 2001:4, 2001:14, 2004:16, 2005:7<br><b>ORDINANCES</b> <sup>[7]</sup> - 1993:13, 1993:14, 1993:25, 1994:2, 2005:10, 2007:6, 2007:8<br><b>ORIGINAL</b> <sup>[1]</sup> - 2002:2<br><b>OTHERWISE</b> <sup>[3]</sup> - 1994:12, 2014:11, 2016:6<br><b>OUTSET</b> <sup>[2]</sup> - 2008:14, 2009:17<br><b>OVERLAP</b> <sup>[1]</sup> - 1998:4<br><b>OVERSIGHT</b> <sup>[1]</sup> - | 1998:10<br><b>OWED</b> <sup>[1]</sup> - 2011:1<br><b>OWN</b> <sup>[11]</sup> - 1977:17, 1977:18, 1978:3, 1978:5, 1980:19, 1984:11, 1985:5, 1985:18, 1985:24, 1998:2, 2012:15<br><b>OWNED</b> <sup>[2]</sup> - 1977:18, 1985:18<br><b>OWNERSHIP</b> <sup>[5]</sup> - 1977:21, 1977:22, 1978:19, 1978:22, 1979:3<br><b>OWNS</b> <sup>[3]</sup> - 1977:14, 1980:17, 1981:1   | 1990:9, 1991:2, 1991:18, 1994:25, 1996:4, 1996:11, 1996:16, 1996:24, 1998:25, 2001:19, 2001:20, 2002:8, 2002:23, 2004:21, 2005:12, 2006:14, 2008:14<br><b>PERCENT</b> <sup>[2]</sup> - 1971:20, 2002:3<br><b>PERCHLORATE</b> <sup>[2]</sup> - 1982:9, 2000:20<br><b>PERHAPS</b> <sup>[2]</sup> - 1987:23, 2016:5<br><b>PERMISSIBLE</b> <sup>[1]</sup> - 1984:12<br><b>PERMISSION</b> <sup>[1]</sup> - 2010:7<br><b>PERMIT</b> <sup>[7]</sup> - 1994:3, 1994:7, 1995:7, 2007:22, 2007:23, 2007:25<br><b>PERMITTED</b> <sup>[1]</sup> - 1999:21<br><b>PERMITTING</b> <sup>[3]</sup> - 1994:4, 1994:15, 1994:23<br><b>PERSON</b> <sup>[2]</sup> - 1990:22, 2004:17<br><b>PERSUADE</b> <sup>[1]</sup> - 1980:1<br><b>PERSUADED</b> <sup>[2]</sup> - 1973:16, 1974:11<br><b>PERSUASIVE</b> <sup>[1]</sup> - 1990:16<br><b>PERVERT</b> <sup>[1]</sup> - 2003:6<br><b>PETER</b> <sup>[1]</sup> - 1986:4<br><b>PIPING</b> <sup>[2]</sup> - 1981:4, 1983:9<br><b>PLACE</b> <sup>[1]</sup> - 1970:3<br><b>PLACEMENT</b> <sup>[1]</sup> - 1984:11<br><b>PLAINTIFF</b> <sup>[17]</sup> - 1971:7, 1975:23, 1977:14, 1977:17, 1978:19, 1983:14, 1985:5, 1996:14, 1997:5, 1997:6, 2001:23, 2003:13, 2008:12, 2011:1, 2013:10, 2013:13, 2014:13<br><b>PLAINTIFF</b> <sup>[1]</sup> - 2011:8<br><b>PLAINTIFFS</b> <sup>[7]</sup> - 1977:7, 1978:1, 1978:10, 1978:17, 1984:21, 1985:9, 2011:3 | <b>PLAINTIFFS</b> <sup>[2]</sup> - 1978:20, 1992:6<br><b>PLAN</b> <sup>[3]</sup> - 2005:18, 2009:3, 2009:4<br><b>PLANNING</b> <sup>[1]</sup> - 2005:22<br><b>PLAY</b> <sup>[1]</sup> - 1971:2<br><b>PLEADING</b> <sup>[1]</sup> - 1969:5<br><b>PLEASED</b> <sup>[1]</sup> - 1984:25<br><b>PLENTY</b> <sup>[1]</sup> - 2008:6<br><b>PLUME</b> <sup>[1]</sup> - 1973:23<br><b>POINT</b> <sup>[11]</sup> - 1968:20, 1973:15, 1974:13, 1979:5, 1987:11, 1987:14, 1987:24, 1990:18, 1990:25, 1998:4, 2002:10<br><b>POINTED</b> <sup>[2]</sup> - 1979:18, 1994:10<br><b>POINTS</b> <sup>[2]</sup> - 1988:15, 2015:20<br><b>POLLUTE</b> <sup>[5]</sup> - 1995:24, 1999:21, 2000:13, 2000:14, 2004:18<br><b>POLLUTED</b> <sup>[1]</sup> - 1978:10<br><b>POLLUTING</b> <sup>[3]</sup> - 2000:20, 2000:24, 2000:25<br><b>POMONA</b> <sup>[3]</sup> - 1979:24, 1980:12, 1982:17<br><b>PORTER</b> <sup>[12]</sup> - 1992:24, 1993:2, 1993:4, 1997:17, 1998:8, 2003:9, 2003:11, 2003:12, 2004:3, 2004:6, 2007:9, 2008:9<br><b>PORTER-COLOGNE</b> <sup>[12]</sup> - 1992:24, 1993:2, 1993:4, 1997:17, 1998:8, 2003:9, 2003:11, 2003:12, 2004:3, 2004:6, 2007:9, 2008:9<br><b>PORTION</b> <sup>[3]</sup> - 2001:4, 2009:4, 2013:14<br><b>POSITION</b> <sup>[3]</sup> - 1975:6, 2009:23, 2014:11<br><b>POSSIBILITY</b> <sup>[1]</sup> - 1999:16<br><b>POSSIBLY</b> <sup>[1]</sup> - 2013:18<br><b>POTENTIAL</b> <sup>[2]</sup> - |
| <b>O</b><br><b>O'CLOCK</b> <sup>[1]</sup> - 2012:10<br><b>OBJECT</b> <sup>[6]</sup> - 1986:25, 2014:21, 2015:13, 2015:25, 2016:10, 2016:23<br><b>OBJECTION</b> <sup>[3]</sup> - 1983:23, 1987:8, 2013:22<br><b>OBJECTIONS</b> <sup>[2]</sup> - 2014:16, 2015:4<br><b>OBSERVATION</b> <sup>[1]</sup> - 1968:9<br><b>OBTAINED</b> <sup>[1]</sup> - 1994:7<br><b>OBVIOUSLY</b> <sup>[2]</sup> - 2007:24, 2008:23<br><b>OCCUR</b> <sup>[2]</sup> - 1986:5, 1986:6<br><b>OCCURRED</b> <sup>[1]</sup> - 2006:18<br><b>OFF-THE-RECORD</b>  | <b>P</b><br><b>P.M</b> <sup>[1]</sup> - 2017:12<br><b>P.M</b> <sup>[1]</sup> - 1968:1<br><b>PARAGRAPH</b> <sup>[1]</sup> - 2011:2<br><b>PARSING</b> <sup>[1]</sup> - 1981:21<br><b>PART</b> <sup>[3]</sup> - 1979:20, 1981:15, 2013:11<br><b>PARTE</b> <sup>[1]</sup> - 2012:17<br><b>PARTICLES</b> <sup>[1]</sup> - 1981:21<br><b>PARTICULAR</b> <sup>[6]</sup> - 1968:13, 1970:4, 1997:9, 1999:6, 1999:11, 2001:13<br><b>PARTICULARITY</b> <sup>[1]</sup> - 1969:23<br><b>PARTICULARLY</b> <sup>[2]</sup> - 1991:10<br><b>PARTIES</b> <sup>[8]</sup> - 1969:10, 1970:16, 1971:8, 1974:14, 1979:18, 2012:1, 2012:9, 2012:17<br><b>PARTIES'</b> <sup>[1]</sup> - 1974:7<br><b>PARTY</b> <sup>[5]</sup> - 1969:24, 1970:21, 1971:1, 1972:21<br><b>PASSED</b> <sup>[1]</sup> - 1991:7<br><b>PAST</b> <sup>[1]</sup> - 2005:9<br><b>PAUSE</b> <sup>[1]</sup> - 1994:21<br><b>PAUSE</b> <sup>[1]</sup> - 2010:3<br><b>PAY</b> <sup>[2]</sup> - 1972:6, 2010:15<br><b>PENALTIES</b> <sup>[1]</sup> - 2003:17<br><b>PEOPLE</b> <sup>[3]</sup> - 2003:20, 2003:23, 2004:1<br><b>PER</b> <sup>[20]</sup> - 1989:21, 1990:2, 1990:5,   | <b>P</b><br><b>P.M</b> <sup>[1]</sup> - 2017:12<br><b>P.M</b> <sup>[1]</sup> - 1968:1<br><b>PARAGRAPH</b> <sup>[1]</sup> - 2011:2<br><b>PARSING</b> <sup>[1]</sup> - 1981:21<br><b>PART</b> <sup>[3]</sup> - 1979:20, 1981:15, 2013:11<br><b>PARTE</b> <sup>[1]</sup> - 2012:17<br><b>PARTICLES</b> <sup>[1]</sup> - 1981:21<br><b>PARTICULAR</b> <sup>[6]</sup> - 1968:13, 1970:4, 1997:9, 1999:6, 1999:11, 2001:13<br><b>PARTICULARITY</b> <sup>[1]</sup> - 1969:23<br><b>PARTICULARLY</b> <sup>[2]</sup> - 1991:10<br><b>PARTIES</b> <sup>[8]</sup> - 1969:10, 1970:16, 1971:8, 1974:14, 1979:18, 2012:1, 2012:9, 2012:17<br><b>PARTIES'</b> <sup>[1]</sup> - 1974:7<br><b>PARTY</b> <sup>[5]</sup> - 1969:24, 1970:21, 1971:1, 1972:21<br><b>PASSED</b> <sup>[1]</sup> - 1991:7<br><b>PAST</b> <sup>[1]</sup> - 2005:9<br><b>PAUSE</b> <sup>[1]</sup> - 1994:21<br><b>PAUSE</b> <sup>[1]</sup> - 2010:3<br><b>PAY</b> <sup>[2]</sup> - 1972:6, 2010:15<br><b>PENALTIES</b> <sup>[1]</sup> - 2003:17<br><b>PEOPLE</b> <sup>[3]</sup> - 2003:20, 2003:23, 2004:1<br><b>PER</b> <sup>[20]</sup> - 1989:21, 1990:2, 1990:5, | 1990:9, 1991:2, 1991:18, 1994:25, 1996:4, 1996:11, 1996:16, 1996:24, 1998:25, 2001:19, 2001:20, 2002:8, 2002:23, 2004:21, 2005:12, 2006:14, 2008:14<br><b>PERCENT</b> <sup>[2]</sup> - 1971:20, 2002:3<br><b>PERCHLORATE</b> <sup>[2]</sup> - 1982:9, 2000:20<br><b>PERHAPS</b> <sup>[2]</sup> - 1987:23, 2016:5<br><b>PERMISSIBLE</b> <sup>[1]</sup> - 1984:12<br><b>PERMISSION</b> <sup>[1]</sup> - 2010:7<br><b>PERMIT</b> <sup>[7]</sup> - 1994:3, 1994:7, 1995:7, 2007:22, 2007:23, 2007:25<br><b>PERMITTED</b> <sup>[1]</sup> - 1999:21<br><b>PERMITTING</b> <sup>[3]</sup> - 1994:4, 1994:15, 1994:23<br><b>PERSON</b> <sup>[2]</sup> - 1990:22, 2004:17<br><b>PERSUADE</b> <sup>[1]</sup> - 1980:1<br><b>PERSUADED</b> <sup>[2]</sup> - 1973:16, 1974:11<br><b>PERSUASIVE</b> <sup>[1]</sup> - 1990:16<br><b>PERVERT</b> <sup>[1]</sup> - 2003:6<br><b>PETER</b> <sup>[1]</sup> - 1986:4<br><b>PIPING</b> <sup>[2]</sup> - 1981:4, 1983:9<br><b>PLACE</b> <sup>[1]</sup> - 1970:3<br><b>PLACEMENT</b> <sup>[1]</sup> - 1984:11<br><b>PLAINTIFF</b> <sup>[17]</sup> - 1971:7, 1975:23, 1977:14, 1977:17, 1978:19, 1983:14, 1985:5, 1996:14, 1997:5, 1997:6, 2001:23, 2003:13, 2008:12, 2011:1, 2013:10, 2013:13, 2014:13<br><b>PLAINTIFF</b> <sup>[1]</sup> - 2011:8<br><b>PLAINTIFFS</b> <sup>[7]</sup> - 1977:7, 1978:1, 1978:10, 1978:17, 1984:21, 1985:9, 2011:3 | <b>PLAINTIFFS</b> <sup>[2]</sup> - 1978:20, 1992:6<br><b>PLAN</b> <sup>[3]</sup> - 2005:18, 2009:3, 2009:4<br><b>PLANNING</b> <sup>[1]</sup> - 2005:22<br><b>PLAY</b> <sup>[1]</sup> - 1971:2<br><b>PLEADING</b> <sup>[1]</sup> - 1969:5<br><b>PLEASED</b> <sup>[1]</sup> - 1984:25<br><b>PLENTY</b> <sup>[1]</sup> - 2008:6<br><b>PLUME</b> <sup>[1]</sup> - 1973:23<br><b>POINT</b> <sup>[11]</sup> - 1968:20, 1973:15, 1974:13, 1979:5, 1987:11, 1987:14, 1987:24, 1990:18, 1990:25, 1998:4, 2002:10<br><b>POINTED</b> <sup>[2]</sup> - 1979:18, 1994:10<br><b>POINTS</b> <sup>[2]</sup> - 1988:15, 2015:20<br><b>POLLUTE</b> <sup>[5]</sup> - 1995:24, 1999:21, 2000:13, 2000:14, 2004:18<br><b>POLLUTED</b> <sup>[1]</sup> - 1978:10<br><b>POLLUTING</b> <sup>[3]</sup> - 2000:20, 2000:24, 2000:25<br><b>POMONA</b> <sup>[3]</sup> - 1979:24, 1980:12, 1982:17<br><b>PORTER</b> <sup>[12]</sup> - 1992:24, 1993:2, 1993:4, 1997:17, 1998:8, 2003:9, 2003:11, 2003:12, 2004:3, 2004:6, 2007:9, 2008:9<br><b>PORTER-COLOGNE</b> <sup>[12]</sup> - 1992:24, 1993:2, 1993:4, 1997:17, 1998:8, 2003:9, 2003:11, 2003:12, 2004:3, 2004:6, 2007:9, 2008:9<br><b>PORTION</b> <sup>[3]</sup> - 2001:4, 2009:4, 2013:14<br><b>POSITION</b> <sup>[3]</sup> - 1975:6, 2009:23, 2014:11<br><b>POSSIBILITY</b> <sup>[1]</sup> - 1999:16<br><b>POSSIBLY</b> <sup>[1]</sup> - 2013:18<br><b>POTENTIAL</b> <sup>[2]</sup> - |

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|--|--|--|--|---|
| <p>1968:15, 2010:25<br/> <b>POTENTIALLY</b> [5] -<br/> 1968:21, 1971:1,<br/> 1973:19, 1986:12,<br/> 2016:12<br/> <b>POURED</b> [1] - 2000:16<br/> <b>POWERPOINT</b> [5] -<br/> 2009:5, 2012:10,<br/> 2012:13, 2012:15,<br/> 2012:20<br/> <b>POWERPOINTS</b> [1] -<br/> 2012:18<br/> <b>PRACTICAL</b> [4] -<br/> 1971:24, 1972:11,<br/> 2010:24, 2016:5<br/> <b>PRACTICALITY</b> [1] -<br/> 1971:9<br/> <b>PRACTICALLY</b> [4] -<br/> 1973:2, 1997:20,<br/> 2014:18, 2015:15<br/> <b>PRECISELY</b> [1] -<br/> 2006:16<br/> <b>PREDICATE</b> [4] -<br/> 2002:14, 2002:21,<br/> 2005:12, 2005:24<br/> <b>PREDICATES</b> [1] -<br/> 2007:19<br/> <b>PREJUDICE</b> [7] -<br/> 1993:23, 1999:8,<br/> 1999:11, 2001:14,<br/> 2002:7, 2004:12,<br/> 2004:15<br/> <b>PREJUDICED</b> [2] -<br/> 1993:22, 2001:13<br/> <b>PRESENCE</b> [1] -<br/> 1968:4<br/> <b>PRESENT</b> [3] -<br/> 1968:5, 1968:6,<br/> 1969:7<br/> <b>PRESENTATIONS</b> [2]<br/> - 2012:10, 2012:14<br/> <b>PRESENTED</b> [5] -<br/> 1983:14, 1987:19,<br/> 2008:12, 2008:21,<br/> 2017:6<br/> <b>PRESENTING</b> [1] -<br/> 2004:23<br/> <b>PRESERVE</b> [3] -<br/> 1986:20, 1987:7,<br/> 2014:15<br/> <b>PRESERVED</b> [5] -<br/> 1987:5, 2010:20,<br/> 2014:9, 2014:23,<br/> 2015:6<br/> <b>PRESIDENT</b> [1] -<br/> 2005:19<br/> <b>PRESUMABLY</b> [1] -<br/> 2016:10<br/> <b>PRESUMPTION</b> [17] -<br/> 1991:2, 1991:17,</p> | <p>1991:24, 1992:11,<br/> 1992:18, 1994:25,<br/> 1995:14, 1995:15,<br/> 1996:1, 1996:8,<br/> 1996:9, 1996:10,<br/> 1996:16, 1996:24,<br/> 1997:8, 1997:12,<br/> 1998:24<br/> <b>PRESUPPOSES</b> [1] -<br/> 1976:12<br/> <b>PRETTY</b> [2] - 2015:22,<br/> 2017:9<br/> <b>PREVENT</b> [1] - 1991:8<br/> <b>PREVENTED</b> [1] -<br/> 1976:5<br/> <b>PRINCIPLE</b> [1] -<br/> 1983:17<br/> <b>PRIVATE</b> [7] - 1992:3,<br/> 1992:13, 1997:18,<br/> 2002:25, 2003:12,<br/> 2003:16, 2003:18<br/> <b>PROBLEM</b> [2] -<br/> 2000:22, 2011:21<br/> <b>PROBLEMS</b> [1] -<br/> 1975:12<br/> <b>PROCEDURAL</b> [1] -<br/> 2002:25<br/> <b>PROCEDURALLY</b> [1]<br/> - 2013:21<br/> <b>PROCEED</b> [3] -<br/> 2009:2, 2011:18,<br/> 2015:2<br/> <b>PROCEEDING</b> [1] -<br/> 2004:22<br/> <b>PROCEEDINGS</b> [2] -<br/> 2010:3, 2017:12<br/> <b>PRODUCE</b> [1] -<br/> 2007:25<br/> <b>PROHIBIT</b> [1] -<br/> 1993:16<br/> <b>PROHIBITION</b> [1] -<br/> 1995:4<br/> <b>PROHIBITS</b> [2] -<br/> 1993:18, 1995:1<br/> <b>PROOF</b> [3] - 1993:24,<br/> 2011:4, 2011:5<br/> <b>PROPER</b> [2] -<br/> 1976:21, 2005:17<br/> <b>PROPERTY</b> [40] -<br/> 1974:5, 1974:10,<br/> 1975:1, 1978:11,<br/> 1978:13, 1978:17,<br/> 1978:21, 1979:3,<br/> 1979:14, 1980:10,<br/> 1980:17, 1980:21,<br/> 1980:23, 1982:1,<br/> 1982:4, 1982:6,<br/> 1982:12, 1982:14,<br/> 1982:23, 1983:1,<br/> 1983:4, 1983:10,</p> | <p>1983:21, 1984:17,<br/> 1984:21, 1985:9,<br/> 1985:14, 1985:18,<br/> 1985:24, 1986:10,<br/> 1987:18, 1987:21,<br/> 1988:2, 1988:3,<br/> 1988:8, 1989:11,<br/> 1990:5, 2005:17<br/> <b>PROPOSITION</b> [3] -<br/> 1989:5, 1992:14<br/> <b>PROTECT</b> [1] - 1993:3<br/> <b>PROTECTIONS</b> [1] -<br/> 2002:25<br/> <b>PROTECTS</b> [1] -<br/> 1993:2<br/> <b>PROVE</b> [9] - 1976:13,<br/> 1976:16, 1984:10,<br/> 1985:12, 1985:23,<br/> 1985:25, 1999:14,<br/> 2003:2, 2008:15<br/> <b>PROVEN</b> [7] -<br/> 1995:21, 1995:22,<br/> 1996:11, 1996:15,<br/> 1996:16, 1997:5,<br/> 1997:6<br/> <b>PROVIDE</b> [8] - 1970:8,<br/> 1970:10, 1979:2,<br/> 1994:11, 2003:12,<br/> 2003:16, 2008:19,<br/> 2012:2<br/> <b>PROVIDED</b> [3] -<br/> 1998:18, 2006:7,<br/> 2007:7<br/> <b>PROVIDES</b> [3] -<br/> 1980:13, 1982:16,<br/> 1982:17<br/> <b>PROVIDING</b> [3] -<br/> 1973:25, 1994:24,<br/> 2012:17<br/> <b>PROVISION</b> [2] -<br/> 2008:8<br/> <b>PROVISIONS</b> [2] -<br/> 1993:3, 2007:14<br/> <b>PROXIMATE</b> [1] -<br/> 2011:3<br/> <b>PUBLIC</b> [20] - 1993:6,<br/> 1995:6, 1995:23,<br/> 1997:18, 1998:8,<br/> 1999:15, 1999:19,<br/> 2001:3, 2001:5,<br/> 2001:6, 2001:9,<br/> 2001:11, 2001:15,<br/> 2001:18, 2002:6,<br/> 2002:8, 2004:18,<br/> 2004:24<br/> <b>PULL</b> [1] - 2001:22<br/> <b>PUMP</b> [1] - 1983:3<br/> <b>PUMPING</b> [5] -<br/> 1970:2, 1971:20,<br/> 1976:2, 1976:3,</p> | <p>1976:5<br/> <b>PURELY</b> [1] - 1999:10<br/> <b>PURPOSE</b> [4] -<br/> 1988:8, 1991:6,<br/> 1991:13, 2003:3<br/> <b>PURPOSES</b> [6] -<br/> 1979:15, 1996:24,<br/> 1998:16, 2000:8,<br/> 2001:12<br/> <b>PURSUE</b> [2] - 1991:2,<br/> 2009:16<br/> <b>PUSH</b> [1] - 1986:17<br/> <b>PUT</b> [4] - 1970:4,<br/> 1995:20, 1997:21,<br/> 2002:16</p> | <p>1987:7, 1988:4,<br/> 1990:25, 1991:3,<br/> 1996:6, 2014:11,<br/> 2014:14, 2016:13<br/> <b>REASON</b> [2] - 1996:8,<br/> 2001:19<br/> <b>REASONABLE</b> [6] -<br/> 1984:10, 1986:15,<br/> 1989:9, 2000:24,<br/> 2016:9<br/> <b>REASONABLENESS</b><br/> [3] - 1988:9, 1989:12,<br/> 1989:18<br/> <b>REASONING</b> [1] -<br/> 1990:15<br/> <b>REASONS</b> [1] -<br/> 2004:13<br/> <b>RECALLING</b> [1] -<br/> 1998:20<br/> <b>RECEIVE</b> [1] -<br/> 2012:12<br/> <b>RECEIVED</b> [1] -<br/> 1988:24<br/> <b>RECESS</b> [2] -<br/> 2016:16, 2017:10<br/> <b>RECOGNIZE</b> [1] -<br/> 1992:9<br/> <b>RECONSIDER</b> [1] -<br/> 2016:6<br/> <b>RECONSIDERATION</b><br/> [1] - 1988:24<br/> <b>RECORD</b> [12] -<br/> 1968:5, 1973:10,<br/> 1973:13, 1984:8,<br/> 1986:20, 2009:17,<br/> 2012:4, 2012:6,<br/> 2012:7, 2012:8,<br/> 2012:11, 2013:1<br/> <b>RECOVER</b> [3] -<br/> 1984:9, 1993:7,<br/> 1993:10<br/> <b>RECOVERY</b> [1] -<br/> 1997:18<br/> <b>REFERENCE</b> [1] -<br/> 1979:17<br/> <b>REFLECT</b> [1] -<br/> 1983:15<br/> <b>REFLECTED</b> [1] -<br/> 1986:12<br/> <b>REFLECTS</b> [1] -<br/> 1990:5<br/> <b>REGARD</b> [12] -<br/> 1968:24, 1974:5,<br/> 1980:14, 1982:11,<br/> 1989:5, 1990:23,<br/> 1993:13, 2007:5,<br/> 2009:4, 2010:19,<br/> 2010:21, 2012:10<br/> <b>REGARDS</b> [1] -<br/> 1990:23</p> |
| <b>Q</b>   |  |  |  |   |
| <b>QUALITY</b> [1] - 1993:9<br><b>QUANDARY</b> [1] -<br>2010:6<br><b>QUESTIONS</b> [1] -<br>2011:13<br><b>QUOTE</b> [1] - 2011:8   |  |  |  |   |
| <b>R</b>   |  |  |  |   |
| <b>RAISED</b> [5] - 2005:6,<br>2013:16, 2014:10,<br>2016:21<br><b>RATHER</b> [3] -<br>1968:24, 1994:23,<br>1999:20<br><b>RATIONAL</b> [1] -<br>1971:14<br><b>RCRA</b> [29] - 1990:1,<br>1990:5, 1990:7,<br>1990:19, 1991:6,<br>1991:8, 1991:20,<br>1992:3, 1992:7,<br>1992:17, 2002:16,<br>2002:18, 2002:20,<br>2002:24, 2003:4,<br>2003:6, 2005:14,<br>2005:17, 2005:22,<br>2006:3, 2006:5,<br>2006:9, 2006:12,<br>2006:20, 2007:1,<br>2008:7<br><b>RE</b> [1] - 1987:3<br><b>RE-ARGUE</b> [1] -<br>1987:3<br><b>READ</b> [1] - 1980:4<br><b>READING</b> [1] -<br>1986:18<br><b>READS</b> [1] - 2013:13<br><b>REAL</b> [5] - 1971:24,<br>1974:5, 1979:14,<br>1983:21, 1984:16<br><b>REALLY</b> [9] - 1983:23,   |  |  |  |   |

|   |   |  |  |  |
|---|---|--|--|--|
| <b>REGIONAL</b> <sup>[1]</sup> -<br>1993:9<br><b>REGIONAL</b> <sup>[1]</sup> -<br>2003:24<br><b>REGULATIONS</b> <sup>[1]</sup> -<br>2006:5<br><b>RELATED</b> <sup>[1]</sup> -<br>2006:10<br><b>RELATES</b> <sup>[2]</sup> -<br>1988:5, 2014:10<br><b>RELEASE</b> <sup>[3]</sup> -<br>1993:16, 1995:19,<br>1998:7<br><b>RELEASES</b> <sup>[2]</sup> -<br>1993:7, 1995:19<br><b>RELIED</b> <sup>[1]</sup> - 1973:24<br><b>RELUCTANT</b> <sup>[1]</sup> -<br>2016:14<br><b>RELYING</b> <sup>[3]</sup> -<br>1996:12, 2005:9,<br>2005:11<br><b>REMAIN</b> <sup>[1]</sup> - 1989:20<br><b>REMEDIES</b> <sup>[1]</sup> -<br>2003:3<br><b>REMEDY</b> <sup>[1]</sup> - 1990:19<br><b>REMEMBER</b> <sup>[1]</sup> -<br>1968:10<br><b>RENEWED</b> <sup>[1]</sup> -<br>2015:18<br><b>REPAIR</b> <sup>[3]</sup> - 1976:21,<br>1976:24, 1977:1<br><b>REPEATEDLY</b> <sup>[1]</sup> -<br>2016:22<br><b>REPHRASE</b> <sup>[2]</sup> -<br>1996:20<br><b>REPURCHASE</b> <sup>[1]</sup> -<br>1984:10<br><b>REQUEST</b> <sup>[1]</sup> -<br>1989:13<br><b>REQUESTING</b> <sup>[2]</sup> -<br>1996:25, 2016:14<br><b>REQUIRE</b> <sup>[3]</sup> - 1994:2,<br>1995:7, 2008:18<br><b>REQUIREMENT</b> <sup>[3]</sup> -<br>1990:24, 2003:1,<br>2005:21<br><b>REQUIREMENTS</b> <sup>[2]</sup> -<br>2001:11, 2005:16<br><b>REREAD</b> <sup>[1]</sup> - 2016:22<br><b>RESOLVE</b> <sup>[1]</sup> -<br>2011:20<br><b>RESPECT</b> <sup>[3]</sup> -<br>1972:3, 1987:1,<br>1992:22<br><b>RESPECTFULLY</b> <sup>[1]</sup> -<br>1998:13<br><b>RESPECTIVE</b> <sup>[2]</sup> -<br>2012:13, 2016:6<br><b>RESPOND</b> <sup>[2]</sup> -<br>1993:12, 2004:12 | <b>RESPONSE</b> <sup>[3]</sup> -<br>1968:8, 1988:17,<br>1994:21<br><b>RESPONSIBILITY</b> <sup>[3]</sup> -<br>1970:23, 1972:19,<br>1972:23<br><b>RESPONSIBLE</b> <sup>[3]</sup> -<br>1971:4, 1971:8,<br>1975:10<br><b>REST</b> <sup>[1]</sup> - 1979:7<br><b>RESTORATION</b> <sup>[17]</sup> -<br>1974:23, 1977:1,<br>1977:3, 1977:7,<br>1977:8, 1979:7,<br>1979:8, 1980:9,<br>1986:12, 1986:15,<br>1988:5, 1988:22,<br>1989:8, 1989:9,<br>1989:12, 1989:16,<br>1989:18<br><b>RESTORE</b> <sup>[1]</sup> - 1977:4<br><b>RESTRICT</b> <sup>[1]</sup> -<br>1990:22<br><b>RESULT</b> <sup>[3]</sup> - 1975:3,<br>2010:15, 2011:3<br><b>RESULTED</b> <sup>[1]</sup> -<br>1993:19<br><b>RESULTS</b> <sup>[1]</sup> - 2015:9<br><b>RESUSCITATE</b> <sup>[1]</sup> -<br>1988:25<br><b>RETAINED</b> <sup>[1]</sup> -<br>1999:17<br><b>RETURN</b> <sup>[1]</sup> - 1998:23<br><b>REVIEW</b> <sup>[1]</sup> - 1974:7<br><b>RICHARD</b> <sup>[16]</sup> -<br>1970:19, 1971:24,<br>1973:7, 1973:23,<br>1979:11, 1980:1,<br>1994:10, 2007:18,<br>2009:2, 2010:18,<br>2013:2, 2013:9,<br>2013:22, 2014:5,<br>2016:8, 2016:17<br><b>RICHARD</b> <sup>[24]</sup> -<br>1973:10, 1979:12,<br>1980:3, 1980:12,<br>1980:18, 1980:23,<br>1981:10, 1982:6,<br>1982:13, 1982:25,<br>1983:2, 1983:8,<br>1983:19, 1984:7,<br>1988:21, 1989:14,<br>1989:22, 2009:6,<br>2009:9, 2010:23,<br>2013:3, 2013:24,<br>2016:19, 2017:11<br><b>RICHARD'S</b> <sup>[1]</sup> -<br>2012:21<br><b>RIGHTS</b> <sup>[10]</sup> - 1985:8,<br>1985:9, 1985:10, | 1985:19, 1985:20,<br>1985:22, 1986:1,<br>1986:2, 1990:22,<br>2010:21<br><b>RISE</b> <sup>[11]</sup> - 1990:7,<br>1990:8, 1991:17,<br>1992:11, 1992:12,<br>1992:17, 1995:18,<br>1996:10, 1996:15,<br>1997:2, 2006:14<br><b>RIVER</b> <sup>[1]</sup> - 1981:15<br><b>ROUND</b> <sup>[2]</sup> - 1984:23,<br>1984:24<br><b>RULE</b> <sup>[2]</sup> - 1986:7,<br>2011:22<br><b>RULING</b> <sup>[8]</sup> - 1985:1,<br>1986:24, 1986:25,<br>1987:2, 1994:20,<br>2008:23, 2009:2,<br>2011:24<br><b>RULINGS</b> <sup>[1]</sup> -<br>1987:11 | <b>SEEING</b> <sup>[1]</sup> - 1999:10<br><b>SEEK</b> <sup>[5]</sup> - 1969:22,<br>1989:8, 1990:23,<br>1993:9, 2003:19<br><b>SEEKING</b> <sup>[3]</sup> -<br>1981:12, 1987:7,<br>2005:11<br><b>SEEM</b> <sup>[2]</sup> - 1984:23,<br>1988:3<br><b>SELL</b> <sup>[1]</sup> - 1985:20<br><b>SEND</b> <sup>[2]</sup> - 1970:18,<br>1973:6<br><b>SENSE</b> <sup>[5]</sup> - 1987:6,<br>1988:4, 1993:8,<br>1993:15<br><b>SEPARATE</b> <sup>[1]</sup> -<br>1992:25<br><b>SERIOUS</b> <sup>[1]</sup> -<br>2008:21<br><b>SERVE</b> <sup>[1]</sup> - 1975:12<br><b>SEVEN</b> <sup>[1]</sup> - 2009:12<br><b>SEVERAL</b> <sup>[2]</sup> -<br>1972:3, 1981:11<br><b>SHALL</b> <sup>[3]</sup> - 1990:22,<br>2004:17<br><b>SHARE</b> <sup>[1]</sup> - 2009:9<br><b>SHARED</b> <sup>[1]</sup> - 2012:15<br><b>SHOES</b> <sup>[1]</sup> - 1997:21<br><b>SHOW</b> <sup>[2]</sup> - 1982:19,<br>2001:11<br><b>SHOWS</b> <sup>[1]</sup> - 1983:7<br><b>SIC</b> <sup>[4]</sup> - 1969:8,<br>1971:6, 1973:17,<br>1973:19<br><b>SIDE</b> <sup>[3]</sup> - 2008:20,<br>2012:15, 2014:16<br><b>SIGNIFICANCE</b> <sup>[4]</sup> -<br>1970:7, 1972:11,<br>2004:21, 2016:5<br><b>SIGNIFICANT</b> <sup>[2]</sup> -<br>1970:1, 2008:14<br><b>SIMILAR</b> <sup>[1]</sup> - 2016:20<br><b>SIMPLY</b> <sup>[2]</sup> - 1984:9,<br>1989:11<br><b>SINGLE</b> <sup>[3]</sup> - 1997:14,<br>2005:11, 2007:19<br><b>SIT</b> <sup>[3]</sup> - 1980:24,<br>1989:3, 2016:24<br><b>SITE</b> <sup>[3]</sup> - 1977:14,<br>1977:15, 1977:24<br><b>SLICING</b> <sup>[1]</sup> - 1979:23<br><b>SLIDE</b> <sup>[1]</sup> - 2009:4<br><b>SMALL</b> <sup>[3]</sup> - 1988:4,<br>2013:11, 2013:13<br><b>SOIL</b> <sup>[14]</sup> - 1977:11,<br>1981:17, 1982:1,<br>1982:11, 1982:15,<br>1982:20, 1982:21,<br>1982:24, 1983:6,<br>1986:10, 1987:21, | 1989:7, 1993:20<br><b>SOLELY</b> <sup>[1]</sup> - 1988:5<br><b>SOMEONE</b> <sup>[2]</sup> -<br>1969:14, 1970:23<br><b>SOMEWHAT</b> <sup>[1]</sup> -<br>1992:25<br><b>SOON</b> <sup>[1]</sup> - 1988:22<br><b>SORRY</b> <sup>[2]</sup> - 1974:21,<br>1995:9<br><b>SORT</b> <sup>[4]</sup> - 1969:15,<br>1975:25, 1981:17,<br>1981:21<br><b>SOURCE</b> <sup>[4]</sup> -<br>1968:21, 1971:12,<br>1971:19, 1973:19<br><b>SOURCES</b> <sup>[3]</sup> -<br>1968:16, 1968:17,<br>1993:4<br><b>SPEAKING</b> <sup>[2]</sup> -<br>1979:15, 2015:16<br><b>SPECIAL</b> <sup>[1]</sup> - 1998:18<br><b>SPECIFIC</b> <sup>[22]</sup> -<br>1969:25, 1970:17,<br>1989:15, 1989:17,<br>1999:4, 2005:8,<br>2005:10, 2005:14,<br>2005:24, 2005:25,<br>2006:2, 2006:3,<br>2006:5, 2006:21,<br>2006:25, 2007:1,<br>2007:14, 2008:8,<br>2008:19<br><b>SPECIFICALLY</b> <sup>[3]</sup> -<br>1969:3, 1969:5,<br>2005:23<br><b>SPENDING</b> <sup>[2]</sup> -<br>1972:19, 1973:1<br><b>STAND</b> <sup>[2]</sup> - 2009:15,<br>2015:25<br><b>STANDARD</b> <sup>[5]</sup> -<br>1977:6, 1983:24,<br>1990:24, 1993:18,<br>1993:24<br><b>STANDARDS</b> <sup>[1]</sup> -<br>2008:16<br><b>STANDING</b> <sup>[4]</sup> -<br>1980:14, 1981:23,<br>1982:18, 2013:8<br><b>STANDPOINT</b> <sup>[2]</sup> -<br>1991:22, 2016:2<br><b>STANDS</b> <sup>[1]</sup> - 1992:13<br><b>STARRH</b> <sup>[1]</sup> - 1986:13<br><b>STARRH</b> <sup>[8]</sup> -<br>1979:24, 1980:8,<br>1982:17, 1986:13,<br>1986:18<br><b>STARTING</b> <sup>[1]</sup> -<br>1968:19<br><b>STATE</b> <sup>[1]</sup> - 2003:25<br><b>STATE</b> <sup>[3]</sup> - 1992:23, |
| <b>S</b>  |   |  |  |  |
| <b>SAD</b> <sup>[1]</sup> - 2012:3<br><b>SAFETY</b> <sup>[1]</sup> - 1995:23<br><b>SAT</b> <sup>[1]</sup> - 2007:17<br><b>SATISFIED</b> <sup>[2]</sup> -<br>1997:10, 1997:12<br><b>SAUGUS</b> <sup>[2]</sup> - 1971:17<br><b>SCV</b> <sup>[2]</sup> - 1984:10,<br>2006:13<br><b>SE</b> <sup>[20]</sup> - 1989:21,<br>1990:2, 1990:5,<br>1990:9, 1991:2,<br>1991:18, 1994:25,<br>1996:4, 1996:11,<br>1996:16, 1996:24,<br>1998:25, 2001:19,<br>2001:20, 2002:8,<br>2002:23, 2004:21,<br>2005:12, 2006:14,<br>2008:14<br><b>SECOND</b> <sup>[3]</sup> - 1995:3,<br>2010:1, 2010:4<br><b>SECTION</b> <sup>[10]</sup> -<br>1990:21, 1991:7,<br>2002:16, 2003:13,<br>2003:14, 2003:21,<br>2004:2, 2005:14,<br>2013:20<br><b>SECTIONS</b> <sup>[3]</sup> -<br>2002:18, 2005:15,<br>2006:5<br><b>SEE</b> <sup>[8]</sup> - 1968:18,<br>1968:20, 1972:18,<br>1973:2, 1979:20,<br>1995:3, 1999:7,<br>2012:3   |   |  |  |  |



|  |   |  |   |   |
|--|---|--|---|---|
| 2003:8, 2007:7<br><b>STATEMENT</b> [2] -<br>2016:20, 2016:22<br><b>STATUTE</b> [17] -<br>1990:1, 1991:14,<br>1995:15, 1996:9,<br>1996:12, 1996:23,<br>1997:9, 1998:15,<br>1998:19, 1998:25,<br>2000:11, 2000:17,<br>2000:18, 2001:22,<br>2002:18, 2003:4,<br>2003:21<br><b>STATUTES</b> [5] -<br>1997:7, 1997:24,<br>1998:3, 2005:8,<br>2005:10<br><b>STATUTORY</b> [4] -<br>1990:24, 1992:11,<br>1996:18, 1996:22<br><b>STAY</b> [3] - 1971:25,<br>1981:13, 1981:22<br><b>STICK</b> [2] - 1981:22,<br>1982:10<br><b>STICKS</b> [1] - 1981:25<br><b>STILL</b> [3] - 1987:12,<br>1987:22, 1997:10<br><b>STIPULATION</b> [1] -<br>1974:3<br><b>STORAGE</b> [1] -<br>2006:11<br><b>STRAIGHT</b> [1] -<br>2004:16<br><b>STRAIGHTFORWARD</b><br><b>D</b> [1] - 2004:16<br><b>STRAIN</b> [1] - 1992:10<br><b>STRAYED</b> [1] -<br>2014:17<br><b>STRICT</b> [2] - 1991:14,<br>1991:23<br><b>STRUCTURED</b> [1] -<br>2002:4<br><b>STRUGGLING</b> [1] -<br>1969:15<br><b>STUFF</b> [2] - 1969:20<br><b>SUBJECT</b> [1] - 2005:7<br><b>SUBMISSION</b> [3] -<br>1983:13, 1988:18,<br>2008:11<br><b>SUBMIT</b> [2] - 1984:18,<br>1988:14<br><b>SUBMITTED</b> [3] -<br>1996:18, 2000:22,<br>2011:14<br><b>SUBSTANTIAL</b> [2] -<br>1976:16, 2006:13<br><b>SUBSTANTIATE</b> [2] -<br>1977:21, 1996:3<br><b>SUBSURFACE</b> [4] -<br>1986:10, 1987:21, | 1989:6, 1989:7<br><b>SUE</b> [2] - 1981:23,<br>2003:20<br><b>SUFFICIENT</b> [6] -<br>1969:23, 1979:2,<br>1980:14, 1981:5,<br>1985:25, 1989:8<br><b>SUGGEST</b> [3] -<br>1990:1, 2011:18,<br>2017:2<br><b>SUGGESTED</b> [1] -<br>1987:7<br><b>SUGGESTING</b> [3] -<br>1975:17, 1979:1,<br>2016:3<br><b>SUIT</b> [1] - 1992:5<br><b>SUPPLEMENTAL</b> [1] -<br>1974:7<br><b>SUPPLY</b> [2] - 1987:17,<br>1989:11<br><b>SUPPORT</b> [12] -<br>1970:9, 1976:16,<br>1976:17, 1980:8,<br>1994:24, 1996:3,<br>1999:24, 2014:8,<br>2015:5, 2015:17,<br>2016:12, 2017:6<br><b>SUPPORTS</b> [3] -<br>1970:10, 1973:11,<br>1981:18<br><b>SUPPOSED</b> [1] -<br>2004:4<br><b>SUPPOSITION</b> [1] -<br>1975:15<br><b>SURFACE</b> [6] -<br>1978:6, 1986:10,<br>1995:2, 1995:24,<br>1999:21, 2004:19<br><b>SURPRISE</b> [1] -<br>1993:15<br><b>SURPRISED</b> [2] -<br>2009:19, 2011:16<br><b>SURROUNDING</b> [2] -<br>1980:22, 1981:14<br><b>SYSTEM</b> [2] - 1970:2,<br>1983:10<br><b>SYSTEMS</b> [3] -<br>1976:2, 1976:3,<br>1976:5 | <b>TESTIFIED</b> [2] -<br>1968:16, 1974:25<br><b>TESTIMONY</b> [6] -<br>1968:9, 1968:24,<br>1973:11, 1973:18,<br>1981:4, 1981:15<br><b>THE</b> [140] - 1968:5,<br>1968:12, 1969:7,<br>1969:12, 1970:8,<br>1970:15, 1971:9,<br>1971:23, 1972:2,<br>1972:6, 1972:9,<br>1972:11, 1972:17,<br>1973:7, 1973:16,<br>1974:2, 1974:5,<br>1974:21, 1975:5,<br>1975:9, 1976:8,<br>1976:12, 1976:18,<br>1976:24, 1977:10,<br>1977:23, 1978:8,<br>1978:16, 1979:1,<br>1979:10, 1980:1,<br>1980:4, 1980:16,<br>1980:21, 1981:7,<br>1982:3, 1982:8,<br>1982:22, 1983:1,<br>1983:5, 1983:12,<br>1983:20, 1984:3,<br>1984:6, 1984:8,<br>1984:19, 1985:11,<br>1986:7, 1986:22,<br>1987:4, 1987:15,<br>1988:7, 1988:16,<br>1989:4, 1989:20,<br>1989:24, 1990:10,<br>1990:14, 1990:25,<br>1991:13, 1991:16,<br>1991:22, 1992:2,<br>1992:9, 1992:16,<br>1992:22, 1993:12,<br>1993:21, 1994:4,<br>1994:8, 1994:14,<br>1994:17, 1994:19,<br>1995:8, 1995:10,<br>1995:13, 1995:20,<br>1996:6, 1996:22,<br>1997:4, 1997:10,<br>1997:15, 1997:20,<br>1997:23, 1998:1,<br>1998:12, 1998:23,<br>1999:6, 1999:18,<br>2000:1, 2000:5,<br>2000:8, 2001:3,<br>2001:8, 2001:12,<br>2002:5, 2002:13,<br>2002:20, 2002:23,<br>2003:9, 2004:7,<br>2004:10, 2004:20,<br>2005:3, 2005:8,<br>2005:23, 2006:7,<br>2006:21, 2006:25, | 2007:5, 2007:11,<br>2007:16, 2008:1,<br>2008:3, 2008:10,<br>2009:1, 2009:8,<br>2009:22, 2010:2,<br>2010:8, 2010:10,<br>2010:17, 2011:17,<br>2011:24, 2012:8,<br>2013:4, 2013:6,<br>2013:12, 2013:17,<br>2013:21, 2013:25,<br>2014:3, 2014:14,<br>2015:1, 2015:8,<br>2015:15, 2015:23,<br>2016:16, 2017:2,<br>2017:9<br><b>THEREFORE</b> [3] -<br>1970:22, 1975:19,<br>2015:14<br><b>THEY'VE</b> [3] -<br>1993:21, 2002:16,<br>2002:18<br><b>THINKING</b> [2] -<br>2009:11, 2016:19<br><b>THREE</b> [3] - 1982:18,<br>1998:2, 2011:19<br><b>THROUGHOUT</b> [1] -<br>1983:10<br><b>TIMELY</b> [1] - 2008:19<br><b>TITLE</b> [2] - 1984:15,<br>1984:16<br><b>TOMORROW</b> [8] -<br>2008:24, 2009:2,<br>2009:20, 2011:22,<br>2012:1, 2012:9,<br>2012:13, 2013:14<br><b>TONIGHT</b> [1] -<br>2008:23<br><b>TONS</b> [1] - 1977:25<br><b>TOOK</b> [1] - 1968:13<br><b>TORT</b> [1] - 1997:3<br><b>TOTAL</b> [1] - 1971:22<br><b>TOUCHES</b> [1] - 1978:4<br><b>TOUGH</b> [1] - 2014:11<br><b>TOXICOLOGIST</b> [3] -<br>2002:1, 2002:2,<br>2005:1<br><b>TRACKING</b> [1] -<br>2016:13<br><b>TRANSFER</b> [1] -<br>1982:10<br><b>TRANSLATE</b> [2] -<br>1971:10, 1971:13<br><b>TRANSPORT</b> [1] -<br>1981:13<br><b>TRANSPORTATION</b><br>[1] - 2006:11<br><b>TREATMENT</b> [1] -<br>2006:11<br><b>TRESPASS</b> [1] - | 1985:13<br><b>TRIAL</b> [5] - 1994:14,<br>2001:2, 2002:10,<br>2008:3, 2014:17<br><b>TRIED</b> [1] - 2015:22<br><b>TRIGGER</b> [1] -<br>1987:12<br><b>TRIGGERED</b> [1] -<br>1988:12<br><b>TRIGGERING</b> [1] -<br>1987:11<br><b>TRUE</b> [2] - 1969:2,<br>1992:22<br><b>TRYING</b> [5] - 1968:10,<br>1985:7, 1987:6,<br>1988:24, 2008:15<br><b>TURN</b> [1] - 1971:23<br><b>TWO</b> [8] - 1981:10,<br>1998:2, 2005:9,<br>2007:6, 2007:8,<br>2009:12, 2014:19,<br>2015:20<br><b>TYPE</b> [2] - 1980:8,<br>1985:5<br><b>TYPES</b> [1] - 1969:25 |
| <b>U</b>   |   |  |   |   |
| <b>U.S.C</b> [3] - 1990:20,<br>1990:21, 1991:7<br><b>UNAVAILABLE</b> [1] -<br>1994:13<br><b>UNDER</b> [17] - 1982:17,<br>1983:13, 1987:11,<br>1988:18, 1990:19,<br>1992:3, 1992:4,<br>1992:7, 1993:4,<br>1998:7, 1999:20,<br>2003:5, 2003:16,<br>2003:22, 2005:11,<br>2007:1, 2008:11<br><b>UNDERGROUND</b> [4] -<br>1991:12, 1993:3,<br>1995:24, 1999:21<br><b>UNDERNEATH</b> [1] -<br>1992:25<br><b>UNDERSTOOD</b> [3] -<br>2008:13, 2009:6,<br>2010:8<br><b>UNFORTUNATELY</b><br>[2] - 1986:20, 2009:3<br><b>UNNECESSARY</b> [1] -<br>1981:23<br><b>UP</b> [5] - 1970:12,<br>1976:22, 1978:1,<br>1978:7, 2015:25<br><b>USES</b> [2] - 1977:6,<br>1989:10  |   |  |   |   |

|   |   |   |
|---|---|---|
| <b>V</b>  | 1975:4, 1975:11,<br>1976:5, 1977:11,<br>1977:24, 1978:24,<br>1982:8   | 1982:1, 1993:13,<br>2009:16                                       |
| <b>V-201</b> [3] - 1970:2,<br>1971:17, 1971:21  |   | <b>WHOLE</b> [1] - 2017:4   |
| <b>VAGUE</b> [2] - 1977:21,<br>2006:9   |   | <b>WIN</b> [1] - 2000:1   |
| <b>VALENCIA</b> [1] -<br>1980:25  | <b>W</b>  | <b>WISH</b> [3] - 1973:8,<br>1974:17, 1983:22                     |
| <b>VALUATION</b> [4] -<br>1974:13, 1975:17,<br>1976:8, 1978:11  | <b>WAIVED</b> [3] - 2011:13,<br>2014:25, 2015:14  | <b>WITHDRAW</b> [2] -<br>1973:5, 2007:21                          |
| <b>VALUE</b> [22] - 1974:6,<br>1974:10, 1974:12,<br>1974:16, 1974:18,<br>1974:20, 1974:22,<br>1975:19, 1976:7,<br>1976:11, 1976:17,<br>1976:18, 1976:21,<br>1976:22, 1976:23,<br>1977:2, 1979:17,<br>1983:16, 1995:14,<br>1998:24 | <b>WANTS</b> [1] - 1984:17  | <b>WITNESS</b> [1] - 2002:2                                       |
| <b>VALUED</b> [2] -<br>1976:19, 1976:20   | <b>WASTE</b> [5] - 1994:3,<br>1995:1, 1995:5,<br>2006:10, 2006:12   | <b>WORD</b> [1] - 2000:14   |
| <b>VARIOUS</b> [1] -<br>1986:16   | <b>WATER</b> [31] - 1975:3,<br>1975:12, 1980:17,<br>1980:24, 1980:25,<br>1981:4, 1981:17,<br>1981:22, 1982:12,<br>1983:2, 1983:3,<br>1983:5, 1984:11,<br>1985:18, 1985:20,<br>1986:6, 1987:13,<br>1987:16, 1987:17,<br>1988:2, 1988:6,<br>1989:7, 1989:11,<br>1991:11, 1993:2,<br>1993:11, 1995:2,<br>2000:16, 2003:17,<br>2003:24, 2004:19 | <b>WORDS</b> [1] - 1997:4   |
| <b>VERDICT</b> [8] -<br>1998:18, 2011:13,<br>2013:15, 2015:17,<br>2015:18, 2016:12,<br>2017:5, 2017:6   | <b>WATER</b> [6] - 1984:10,<br>1992:23, 1993:1,<br>1993:9, 2003:10  | <b>WORKS</b> [2] - 1971:21,<br>1975:2                             |
| <b>VERSION</b> [3] -<br>2012:20, 2012:23  | <b>WATER'S</b> [1] -<br>2006:13   | <b>WORRIED</b> [1] - 2017:1                                       |
| <b>VIA</b> [1] - 1982:7   | <b>WATERS</b> [2] -<br>1995:24, 1999:22   | <b>WORTH</b> [1] - 2017:3   |
| <b>VIEW</b> [2] - 2001:18,<br>2014:20   | <b>WEDNESDAY</b> [1] -<br>1968:1  | <b>WRITE</b> [1] - 2003:7   |
| <b>VIGOROUS</b> [1] -<br>2004:23  | <b>WELL-BY-WELL</b> [1] -<br>1981:2   | <b>WU'S</b> [1] - 1985:1  |
| <b>VIOLATED</b> [7] -<br>1997:5, 1998:15,<br>1998:19, 2005:15,<br>2006:6, 2006:21,<br>2007:2  | <b>WELLS</b> [12] - 1969:5,<br>1969:11, 1971:4,<br>1971:13, 1971:19,<br>1975:14, 1980:19,<br>1980:21, 1980:24,<br>1981:2, 1984:12   | <b>Y</b>  |
| <b>VIOLATING</b> [1] -<br>1991:19   | <b>WHITTAKER</b> [22] -<br>1968:25, 1969:13,<br>1977:13, 1977:15,<br>1977:24, 1983:18,<br>1986:8, 1993:15,<br>1995:18, 1995:22,<br>1997:11, 1998:16,<br>2005:19, 2006:18,<br>2007:1, 2008:20,<br>2010:12, 2011:4,<br>2011:7, 2011:9,<br>2011:10   | <b>YOURSELF</b> [1] -<br>1997:21                                  |
| <b>VIOLATION</b> [13] -<br>1990:6, 1992:11,<br>1992:12, 1993:25,<br>1996:15, 1996:17,<br>1996:22, 2000:17,<br>2001:22, 2005:7,<br>2006:1, 2006:18,<br>2007:22   | <b>WHITTAKER'S</b> [5] -<br>1974:15, 1975:6,  | <b>Z</b>  |
| <b>VIOLATIONS</b> [7] -<br>1990:8, 1996:18,<br>2006:12, 2006:19,<br>2007:13, 2007:14,<br>2008:7   |   | <b>ZERO</b> [5] - 1976:10,<br>1976:16, 1977:5,<br>1977:7, 1977:15 |
| <b>VIRTUE</b> [1] - 1990:6  |   |   |
| <b>VOCS</b> [8] - 1973:17,  |   |   |